

**In The Matter Of:**  
*Hickman's Egg Farm*  
*Permit No. 140062*

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*Combined Public Meeting and Executive Session*  
*November 7, 2016*  
*Maricopa County Air Pollution Hearing Board*

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1] Hearing Board was taken on November 7, 2016, commencing at  
2] 1:05 p.m. at the offices of the Maricopa County Air  
3] Quality Department, 1001 North Central Aveune, Suite 560,  
4] Phoenix, Arizona, before LAURA A. ASHBROOK, a Certified  
5] Reporter in the State of Arizona.

6]

7] MARICOPA COUNTY AIR POLLUTION HEARING BOARD:

8] SHANE LEONARD, Chairperson  
9] District 1

10] LUCAS NARDUCCI,  
District 2

11] KIM McEACHERN,  
12] District 3

13] SINE KERR,  
District 4

14] BRIAN DAVIDSON, Vice Chair  
15] District 5

16] ERIC HISER,  
Board Attorney

17]

18] For the Petitioner Appellant:

19] DANIEL E. BLACKSON  
20] 42211 W. Salome Highway  
Tonopah, Arizona 85354

21] For the Department of Air Quality:

22] ROBERT SWAN  
23] Deputy County Attorney  
24] 222 North Central Avenue  
Suite 1100  
Phoenix, Arizona

25] P R O C E E D I N G S

Meeting of the Maricopa County Air Pollution

1] CHAIRMAN LEONARD: Folks, I'd like to call  
2] this meeting of the Maricopa County Air Pollution Hearing  
3] Board together. I'll note the start time as 1:05. As was  
4] mentioned earlier, the first agenda item will be to motion  
5] into executive session so we can get a little instruction  
6] from our folks. I appreciate your deference. Don't go  
7] too far because we'll try and get back right about 1:30  
8] With that, I will entertain a motion to go  
9] into executive session, please.  
10] MR. NARDUCCI: Move to go into executive  
11] session.  
12] MS. KERR: Second.  
13] CHAIRMAN LEONARD: All in favor?  
14] (All members responded in the affirmative.)  
15] CHAIRMAN LEONARD: Any opposed?  
16] (There was no response.)  
17] CHAIRMAN LEONARD: All right, folks. We're  
18] going into executive session. Stay where you're at and  
19] we'll kick over into the other room.  
20] (Recess taken, 1:07 p.m. to 1:41 p.m.)  
21] CHAIRMAN LEONARD: Thank you very much for  
22] your patience, folks. I'll entertain a motion to go back  
23] into open session, please.  
24] MR. NARDUCCI: So moved.

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1] CHAIRMAN LEONARD: Second?  
2] MR. DAVIDSON: Second.  
3] CHAIRMAN LEONARD: All those in favor?  
4] (All members responded in the affirmative.)  
5] CHAIRMAN LEONARD: Any opposed?  
6] (There was no response.)  
7] CHAIRMAN LEONARD: All right. We are back  
8] in open session. Okay. Folks, again, thanks for your  
9] patience. We appreciate you giving the board an  
10] opportunity to kind of run through what we think our  
11] process rules are supposed to be today.  
12] For purposes, however, of clarification, I  
13] know some folks in the audience may not have ever done  
14] this before. So what I'd like to do is have Mr. Hiser  
15] kind of run you through the process we're going to go  
16] through today.  
17] One of the things that I want to make sure I  
18] point out is that the majority of today's hearing is going  
19] to be between Mr. Blackson and the Department. We have,  
20] at the end of the hearing, a place for public comment  
21] which is where I think some folks are going to want to  
22] talk, understanding though that that won't take place as a  
23] matter of the hearing.  
24] So if you do have something you'd like to  
25] say, certainly stay so we can get those comments. That

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1] won't be a part of the actual hearing. That doesn't mean  
2] it won't be put into the meeting minutes, so it will be  
3] there. I just want to make sure folks understand.  
4] So for purposes of Mr. Blackson and purposes  
5] of Mr. Swan and the Department, if Mr. Hiser you go ahead  
6] and walk us through what the process is going to be. That  
7] way, everybody is on the same page, please.  
8] MR. HISER: Thank you, Mr. Chairman. This  
9] is the second hearing in this matter. In the previous  
10] hearing, the Board had decided that the issues that we  
11] would be investigating today are the propriety of the  
12] procedures that were used in issuance of the minor permit  
13] revision and any issue going to the minor permit revision  
14] itself.  
15] At this hearing, we will start with five  
16] minutes per side for opening arguments, that you can make  
17] sort of a preview of your case you will be putting on.  
18] We'll start with Mr. Blackson as the petitioner appellant  
19] who will be followed by Mr. Swan responding on behalf of  
20] the Department.  
21] We will then go to the petitioner  
22] appellant's case which will be Mr. Blackson. He will then  
23] be able to put on the testimony. We understand that there  
24] will be testimony from himself as a witness and also from  
25] an expert. Following each witness' testimony, there will

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1] be an opportunity for cross-examination by the other  
2] party.  
3] After Mr. Blackson is finished with his  
4] case-in-chief and if he feels he wants to reserve time for  
5] rebuttal, we may come back to rebuttal. Then we'll go to  
6] Mr. Swan. Mr. Swan will be able to put on any witnesses  
7] that he chooses to do so. Mr. Blackson will have an  
8] opportunity to cross-examine those witnesses.  
9] If there is a request for rebuttal, we'll  
10] then handle any rebuttal witness testimony that we need to  
11] do so and then we will close with, say, ten minutes per  
12] party for the closing arguments, because you'll have a  
13] little bit more to talk about because there will be  
14] evidence and stuff in the record at that point.  
15] We would like to hold this hearing to  
16] close -- somewhere between the -- 4:30, around that time.  
17] So that's roughly about an hour and 20 minutes per party.  
18] We will also take a break in the middle of the day to  
19] allow people to go out and use the restroom or whatever.  
20] If you do need to break during the day, just please go out  
21] and try not to make too much noise going through the  
22] doors.  
23] I believe that is most of the information  
24] that we need to have. Just to clarify for the parties,  
25] the Board has, once again, asked me to serve in the

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1] capacity of the hearing examiner, so I may be asking you  
2] questions for the purpose of expanding the record for the  
3] Board's consideration as well.  
4] Are there any questions from the parties?  
5] With that then, Mr. Chairman, I will turn it back over to  
6] you to start the hearing.  
7] CHAIRMAN LEONARD: Thank you very much.  
8] Just one reminder: We do have a court reporter in the  
9] room today so I would ask, as best you can, to kind of  
10] look over every once in a while; I will too, in case she  
11] gets behind or her fingers start cramping or whatever may  
12] be the case, just as a reminder, and then again, if  
13] something happens and you need some assistance, just let  
14] me know.  
15] So with that, Mr. Blackson, the floor is  
16] yours for opening statement, please.  
17] MR. BLACKSON: Thank you. Chairman Leonard  
18] and members of the Board, Maricopa County Air Quality  
19] Department alleges that the Department has not developed  
20] regulations addressing animal feeding operations emissions  
21] from the units covered in the EPA study for two main  
22] reasons: one the absence of reliable emissions factors  
23] and, two, the federal and state law limit the Department's  
24] authority to promulgate regulations regarding animal  
25] feeding operations emissions from units in the EPA study.

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<p>1] They also note that the Arizona Department of 2] Environmental Quality has not adopted relevant 3] regulations, and their second reason for not addressing it 4] is that emissions from the Tonopah Egg Ranch poultry 5] operation are fugitive. 6] My pre-hearing disclosure refutes the 7] Department's position that a new source review was not 8] necessary to determine whether or not a Title V or 9] non-Title V permit is appropriate for the Tonopah Egg 10] Ranch operation from this day forward. I understand that 11] the underlying permit is not at issue, and what is at 12] issue is whether a non-Title V permit is still appropriate 13] or whether from this day forward, it should be a Title V 14] permit. 15] Our arguments demonstrate that the 16] Department's decision was arbitrary, unreasonable, 17] unlawful and the technical judgment was invalid, and 18] that's what I need to demonstrate to you, according to 19] your procedures, and I believe that I can do that. The 20] Department's position on this permit action is at odds 21] with their obligation under their EPA delegated authority 22] and Clean Act responsibilities with respect to the Tonopah 23] Egg Ranch permit action that we are here to discuss today. 24] The Department is intentionally limiting the 25] scope of the minor permit modification review by ignoring</p>	<p>1] witness, to demonstrate that a new source review with a 2] minor permit modification should have been done and the 3] new source review pollutants quantified. 4] Expert witness Miss Martin will testify 5] about emissions calculations permitting major stationary 6] sources at the facility. We intend to challenge the 7] Department's position on fugitive emissions and 8] demonstrate that the emissions are non-fugitive. 9] I can only use the plain language of the 10] Clean Air Act of Maricopa County state implementation plan 11] air quality rules and that will be the basis of my 12] argument. Although I've been able to find some legal 13] cases on the internet that support my appeal, I don't have 14] the skills or the ability to find, cite or weave court 15] cases into the legal argument. 16] However, I would like to make a statement 17] about the Chevron USA, Incorporated versus Natural 18] Resources Defense Council. That was a Supreme Court case. 19] It seems to me that the laws, regulations and rules are 20] clear, and interpretation is not necessary. Therefore, 21] the Chevron decision would not apply. 22] I hope by the end of the day you will agree 23] with us that a new source review should have been 24] triggered during the minor permit modification process. 25] Thank you.</p>
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<p>1] stationary sources that are at the facility which would 2] demonstrate to have the potential to emit more than 3] 100 tons per year of new source review pollutants. 4] We will lay the regulatory foundation 5] through the Department's rule showing that the Department 6] has the ability to and the obligation to conduct a new 7] source review. We will show that there are published 8] emission factors that can be used to calculate estimated 9] emissions from poultry operations. We will show that it 10] is no longer -- that there are no longer reasons to ignore 11] stationary sources of the Tonopah Egg Ranch. 12] We are also going to show today that the 13] Department did not follow rules performing a new source 14] review during the minor permit modification process. The 15] Department intentionally limited their review process by 16] ignoring stationary sources that have the potential to 17] emit more than 100 tons per year of new source review 18] pollutants. Department continues to ignore these 19] stationary sources in an arbitrary, capricious way. 20] In August, the Board ruled on the 21] jurisdiction of this hearing. As recent as Friday last 22] week, the Department again made an effort to limit the 23] scope of this hearing to emissions only from the diesels 24] for the emergency generators and the boiler operations. I 25] intend to provide testimony, including myself and expert</p>	<p>1] CHAIRMAN LEONARD: Thank you. Mr. Blackson. 2] Mr. Swan. 3] MR. SWAN: Mr. Chairman, members of the 4] Board, in the Department's view -- in the Department's 5] view, this is a very simple case that involves an 6] application for a minor permit revision to add boilers and 7] generators to an existing operation that already had been 8] granted an air quality permit. So, again, we're looking 9] at an application for a minor permit revision to an 10] existing permit. 11] The Board's own manual at Section 3.22 12] states that under these circumstances, the petitioner 13] certainly has the right to challenge the Department 14] directors' action in approving that minor permit revision, 15] but the petitioner has the high burden to prove that in 16] doing so, the Department's decision to issue the revision 17] falls into at least one of the following four categories: 18] It was arbitrary; it was unreasonable; it was unlawful or 19] it was based upon a technical judgment that was clearly 20] invalid, and the petitioner must -- you must find that one 21] of those four categories of omissions is applicable here. 22] It's our argument that you must find that in order to 23] overturn and not confirm the Department directors' 24] decision to issue the permit. 25] Here, the Department's decision to issue the</p>

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1] minor permit revision should be confirmed under all of  
2] those. We met all of those standards and others. The  
3] evidence we will present will confirm that the Department  
4] applied all proper permitting standards and processes.  
5] At the conclusion of the evidence, the  
6] Department will ask the Board to approve the Department's  
7] decision to issue the minor permit modification. Thank  
8] you.  
9] CHAIRMAN LEONARD: Thank you, Mr. Swan. All  
10] right. Mr. Blackson, however, you would like to proceed,  
11] whether it's you first or you'd like your expert witness  
12] to proceed.  
13] MR. BLACKSON: What I would like to do first  
14] is Mr. Swan and I agreed that all of the exhibits that  
15] have been provided in both of our pre-hearing disclosures  
16] be accepted by the Board as exhibits. So I would like to  
17] make that motion.  
18] CHAIRMAN LEONARD: Mr. Swan, are you okay  
19] with that?  
20] MR. SWAN: The Department agrees, yes.  
21] CHAIRMAN LEONARD: Thank you, gentlemen, for  
22] doing that. We appreciate that. So we'll note that for  
23] the record, and thank you.  
24] Mr. Hiser, I apologize. Sometimes I can be  
25] a little too informal. We need to admit those as part of

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1] the hearing. We will admit those.  
2] MR. BLACKSON: With that, I would also like  
3] to make a motion to submit some regulatory rules for the  
4] board to consider also. We've talked -- and it's the  
5] understanding that the old version of the county rules  
6] have been used to review this permit. So with that, I  
7] would move that Maricopa County Rules 100, 200, 220, 241  
8] and if, Mr. Swan would agree, also 41 CFR 165 which I  
9] believe the county has referenced as a legal citation.  
10] MR. SWAN: We have no problem with any of  
11] those being admitted.  
12] MR. HISER: I'd just like to clarify whether  
13] these are the current rules or these are historic rules?  
14] MR. BLACKSON: My understanding -- I have  
15] both, but my understanding is they are the historic rules.  
16] MR. HISER: Historic begs the question  
17] effective as of what date, just so I know what rules we're  
18] talking about?  
19] MR. SWAN: I understand from my colleague  
20] Mr. Sumner, who is head of the permitting division, that  
21] all four of those rules were updated effectively --  
22] effective as of February 2016.  
23] MR. HISER: Okay. So these would be the  
24] rules in effect in the 2014 time frame as previewed prior  
25] to the revision of Rule 16. Thank you.

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1] MR. BLACKSON: I do have copies.  
2] MR. HISER: Copies would be appreciated.  
3] Most certainly that was going to be my next question, is  
4] if you had copies. And just for the record, the CFR  
5] reference would be 40 CFR part 51.165.  
6] MR. SWAN: In lieu of the citation he gave?  
7] MR. HISER: That's the one I think he  
8] intended but he transposed a couple of numbers.  
9] MR. BLACKSON: I did. I apologize.  
10] CHAIRMAN LEONARD: Okay. If both parties  
11] are in agreement, I will accept those as submitted.  
12] MR. BLACKSON: Okay. I haven't done this  
13] before, but I would like to be able to present the case.  
14] So I would call myself as a witness. Is that proper?  
15] MR. HISER: So, Mr. Blackson, if you will  
16] raise your right arm.  
17] DANIEL E. BLACKSON,  
18] a witness herein, having been first duly sworn by the  
19] Certified Reporter to speak the truth and nothing but the  
20] truth, was examined and testified as follows:  
21] MR. HISER: Thank you. You may proceed.  
22] CHAIRMAN LEONARD: Also, so that we have one  
23] point of focus, if you need to get back up and get your  
24] information, that's fine, but, again, because of the court  
25] reporter, if you can make sure every once in a while we'll

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1] take a breath. You and I will be doing this together, so  
2] just let me know if something comes up that seems a little  
3] funny, all right? Thank you, sir.  
4] MR. HISER: And for the benefit of the court  
5] reporter, if you could start by stating your name and  
6] spelling it and your address.  
7] MR. BLACKSON: My name is Daniel E.  
8] Blackson. D-A-N-I-E-L, E. B-L-A-C-K-S-O-N. My address  
9] is 42211 West Salome Highway, Tonopah, Arizona, 85354.  
10] So I have some new information that I would  
11] like to add, and I have not done this before, so if I  
12] drift out of the bounds, please let me know, but I would  
13] like to talk about about the rule process some and also at  
14] the core of this, our fugitive, non-fugitive emissions,  
15] and I would like to be able to state a position on that.  
16] So if we could start with Rule 100, I  
17] believe there's some important definitions in Rule 100.  
18] So we'll have the whole version and I would first like to  
19] point out the definition of a building and I'm turning to  
20] the -- it's in alphabetical order and it can be found on  
21] page 12, and I think this definition will be important as  
22] we talk about fugitive and non-fugitive emissions.  
23] So 200.26, "Building, Structure, Facility  
24] and Installation. All the pollutant emitting equipment  
25] and activities that belong to the same industry grouping

<p style="text-align: right;">Page 17</p> <p>1] that are located on one or more contiguous or adjacent 2] properties and that are under the control of the same 3] person or persons under common control except the 4] activities of any vessel. Pollutant-emitting activities 5] shall be considered as part of the industrial grouping if 6] they belong to the same major group as described in the 7] Standard Industrial Classification Manual, 1987." 8] I would also like to read the fugitive 9] emissions definition. Again, it's alphabetical and it 10] would be found on page 17. 11] "Fugitive emission. Any emission which 12] could not reasonably pass through a stack, chimney, vent, 13] or other functionally equivalent opening." 14] And then there's also a definition for major 15] source, and that's number 60 on page 19. "A major source 16] as defined in Rule 240, permits for new major sources and 17] modifications to existing major sources of these rules." 18] B talks about hazards, air pollutants would 19] be relevant to this, but C goes on to say at the bottom of 20] the page, "A major stationary source, as defined in 21] Section 302, definitions of the act, that directly emits 22] or has the potential to emit 100 tons per year or more of 23] any air pollutant, including any major source of fugitive 24] emissions of any such pollutant." 25] And I would like to stop at this point and</p>	<p style="text-align: right;">Page 19</p> <p>1] I believe we'll be talking about sources so 2] that definition is worth going through. Source is on 3] page 28 at the very bottom. "Source: Any building, 4] structure, facility or installation that may cause or 5] contribute to air pollution." 6] And then with that, there's also a 7] definition of a stationary source. This is on page 29. 8] "Any source that operates at a fixed location and that 9] emits or generates regulated air pollutants." 10] So I would like to say that the Clean Air 11] Act does not have an exemption for animal feeding 12] operations, and also, when you look at the county rules, 13] rules 200, 210, 220, 240, 241, they describe the 14] permitting process of all sources. Those rules do not 15] have an exemption for animal feeding operations. In fact, 16] if you look at Rule 100, it does not even have a 17] definition of an animal feeding operation. 18] Part of my appeal was issues with the permit 19] application for boilers and the source of fuel from 20] boilers. That got sorted out eventually through an e-mail 21] note from Robert Palin to the Department on May 10th, 2016 22] and I would like to motion to enter that record -- to make 23] that record an exhibit. 24] CHAIRMAN LEONARD: Mr. Swan? 25] MR. SWAN: I think it's already deemed</p>
<p style="text-align: right;">Page 18</p> <p>1] make a statement that that's fugitive emissions here that 2] have to be quantified, so somewhere in the process, even 3] if the emissions from the hen houses are fugitive, they 4] should have at least been calculated to determine whether 5] this is a major source or major stationary source. 6] "The fugitive emissions of a stationary 7] source shall not be considered in determining whether it's 8] a major stationary source for the purpose of 9] Section 302(j) of the act unless the source belongs to one 10] of the following categories," and then this is the list of 11] categorical stationary sources that are found in the act. 12] I don't think there is a need to read through those. 13] There's an important definition 14] on quantifiable at the bottom of page 24. "Quantifiable: 15] With respect to emissions, including the emissions 16] involved in equivalent emission limits and emission 17] trades, capable of being measured or otherwise determined 18] in terms of quantity and assessed in terms of character. 19] Quantification may be based on emission factors, stack 20] tests, monitored values, operating rates and averaging 21] times, materials used in a process or production, modeling 22] or other reasonable measurement practices." 23] So I believe what this is saying is that 24] emissions can be quantified and you're not limited to 25] using AP-42 in order to quantify those emissions.</p>	<p style="text-align: right;">Page 20</p> <p>1] admitted so -- 2] MR. BLACKSON: Oh, it was? 3] MR. SWAN: Was it in the disclosure? I'm 4] assuming it was. 5] CHAIRMAN LEONARD: Actually, I was going 6] to -- I'm pretty sure we saw that as a part of your 7] submittal. If it was something different than that, 8] then -- 9] MR. BLACKSON: No, it's not. I apologize. 10] I just didn't know everything would be accepted. 11] CHAIRMAN LEONARD: No apologies necessary. 12] You're good. Thank you. 13] MR. BLACKSON: Do we have a copy of that 14] that I can read from? 15] It's Exhibit 33. So in this e-mail there's 16] a question asked about boilers and the source of fuel -- 17] I'm sorry -- about the boilers and the existence of a 18] propane tank, and Mr. Fallon or Falin, maybe is how he 19] said his name, came back and responded that there are two 20] propane tanks on-site, each of them a thousand gallons 21] that fuel the boilers themselves. That resolved that 22] issue and the tanks were declared to be insignificant. So 23] that resolved the issue. 24] But as I looked through the records, what I 25] saw is that on the technical support document, it</p>

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1] actually -- the final one was actually dated as prepared  
2] November 30th, electronically signed on February 17th. So  
3] I am puzzled here how you can receive information in May  
4] and it get recorded in a document that you have considered  
5] to be final in February. So I'm a little bit -- I guess  
6] question how the county can do that, and that goes back to  
7] is this type of thing arbitrary? Maybe there's no TSD out  
8] there that's not been provided that's dated differently or  
9] is that an illegal type thing?  
10] I know as environmental manager and  
11] operations manager, if we were to do records required by a  
12] permit or a regulation, if this activity happened, if this  
13] truly is what happened, that would be pretty egregious and  
14] that person might even get terminated back-dating some  
15] information into an official record. So I -- so I  
16] would -- if there's something more current than that, I  
17] would really appreciate if the county would volunteer that  
18] up, and it does go back to the processing of the  
19] application and how that's being handled.  
20] And then I also came across another concern  
21] regarding the processing of the permit and -- well, let me  
22] back up. I kind of got ahead of myself.  
23] So the hen houses, I believe, from what we  
24] read here are definitely stationary sources and they do  
25] emit regulated air pollutants that would be PM-10, PM-2.5

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1] and VOC's. The process waste water surface impoundment  
2] ponds are stationary sources also, and in the TSD, the  
3] Department called them structural. I'll mention now that  
4] I believe that there's also VOC emissions from that, and  
5] we will talk about that in a little bit.  
6] I would also mention that the definition of  
7] stationary sources also found in 40 CFR 51.165, it really  
8] reads the same as what the county has but it's a little  
9] bit updated. "Stationary source means any building,  
10] structure, facility, installation which emits or may emit  
11] a regulated pollutant, and the regulated -- the PM-10, the  
12] PM-2.5 and the volatile organic compounds are resource  
13] review pollutants."  
14] Also in the Code of Federal Regulation, it  
15] does give a definition of building structure -- of a  
16] building, structure, facility and installation, and that  
17] definition reads, "Building, structure, facility,  
18] installation means all of the pollutant-emitting  
19] activities as it belongs to the same industrial grouping,  
20] are located at one or more contiguous or adjacent  
21] properties and are under the control of the same person or  
22] persons under common control, except the activities of any  
23] vessel pollutant emitting activities, shall be considered  
24] as part of the same industrial grouping; they belong to  
25] the same major group, for example, which have the same two

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1] digit codes as described in the standard industrial  
2] classification manual," and then it goes on to kind of say  
3] how that was amended. So, again, the hen houses are  
4] buildings and the process waste water surface impoundments  
5] are structures and the TSD does recognize them as  
6] structures.  
7] The regulated air pollutants from these  
8] sources have not been quantified. If you look at the  
9] permit application, that applicant left section Z-M part  
10] of the minor permit modification application blank but  
11] they do appear on the TSD calculations, and I guess I  
12] could stop at this point if we want to actually look at  
13] those documents.  
14] CHAIRMAN LEONARD: Mr. Blackson, if you'd  
15] like us to, we can review that if you want. If not, again  
16] just, as a reminder, we have all the information as you  
17] submitted and we've accepted it into record. If you're  
18] saying you'd like to point that out, that's just fine.  
19] MR. BLACKSON: Thank you. Regarding the  
20] waste water ponds, in the TSD, the ponds are mentioned and  
21] that's on page seven in the comments and it states none of  
22] the chemicals containing VOC or HAPs but there's evidence  
23] in the ADAQ determination of applicability of other  
24] chemicals used in that building, and those chemicals,  
25] other than egg washing, do contain VOC's such as chemicals

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1] to clean the floor and probably the walls, and, also, the  
2] TSD was not comprehensive in its analysis and it didn't  
3] look at feces and urine, broken egg matter that would be  
4] on those eggs. That's why they're being washed. So all  
5] of that matter then would be carried with it through the  
6] wash water into these ponds and, of course, the biological  
7] activity still continues in those ponds.  
8] There's also a matter with the actual permit  
9] application itself, and there actually may be a third  
10] application that predates the two that we have, and I  
11] would like to try and clear that up if possible. And in  
12] going through my records request, there was an e-mail note  
13] between the permitting supervisor and I believe the  
14] permitting engineer that indicated that the original  
15] permit application did not have the boilers. So I would  
16] move to include -- and you have not seen this -- include  
17] that e-mail and the attachment into the record as an  
18] exhibit.  
19] MR. HISER: Mr. Swan, was that included in  
20] what you were knowing you were admitting?  
21] MR. SWAN: Did Mr. Blackson disclose it?  
22] MR. BLACKSON: I did not because I did not  
23] find it until Saturday night.  
24] MR. HISER: Then Mr. Blackson you will need  
25] to present a copy of that to Mr. Swan.

<p style="text-align: right;">Page 25</p> <p>1] MR. SWAN: We'll need to review it. I was 2] assuming it was part of your disclosure statement. The 3] Department does not object to the admission of this 4] document. It's a little unclear. There's green, red and 5] blue. 6] CHAIRMAN LEONARD: For the court reporter's 7] benefit, Mr. Swan was asking if Mr. Blackson might 8] describe what the different colors in the proposed e-mail 9] exhibit mean. 10] MR. BLACKSON: Yes. If you look at the 11] e-mail, the cover e-mail on the document, that explains 12] what the colors are. So there could be an explanation. 13] It just looks like there was another application. 14] MR. SWAN: Again, the Department does not 15] object to introduction of this piece of evidence, although 16] we want to make it clear that the various colors were not 17] applied by the Department. I assume they were applied by 18] Mr. Blackson or somebody on his team. You found them that 19] way? 20] MR. BLACKSON: Yes. If you look at the 21] e-mail, embedded in the e-mail it says, "Todd, the 22] attached document has been revised per your 23] input/suggestion (in red)." 24] MR. SWAN: Okay. 25] MR. BLACKSON: Revised sections --</p>	<p style="text-align: right;">Page 27</p> <p>1] On page 20 and the section 405.2, minor 2] permit revisions. "Minor permit revision procedures shall 3] used for a change that triggers a new applicable 4] requirement", and then it has steps one, two, three and 5] then, "Minor permit revision procedures shall be used for 6] a change that increases operating hours or rates of 7] production", and, "The minor permit revision procedures 8] shall be used for a change in fuel." 9] So on to the next page then, it continues to 10] explain the procedures that will be used for a change that 11] results in emissions subject to monitoring, record 12] keeping. "E. Minor permit revision procedures shall be 13] used for a change that decreases emissions. Minor permit 14] revision procedures shall be used for a change that 15] replaces an item -- " but also complementing this is 16] Rule 200, permit requirements. So Rule 220 has some 17] specifics and Rule 200 also talks about the change. 18] I believe actually I got a little confused 19] with the different rules so the numbering is -- caused me 20] a little bit of a problem here, but I think I want to go 21] back to Rule 220, section 300 and if you look on 22] page four, it's got the permit application processing 23] procedures, and in these procedures, there is a standard 24] application form and required information, 301.1. Second 25] step, permit application, and a compliance plan; that</p>
<p style="text-align: right;">Page 26</p> <p>1] MR. SWAN: Okay. We're satisfied. 2] CHAIRMAN LEONARD: Okay. We'll introduce 3] that. Sorry. I'm used to being on your side of the 4] table. My apologies. We'll admit that, please. 5] MR. BLACKSON: And I would like to make a 6] point then that goes back to the Department's actions on, 7] you know, was that arbitrary? What about the technical 8] decision on that? Where is that other -- that other 9] application? And hopefully, it has not been swept away 10] somewhere where it can't be found, because I think an 11] important point on that is that a similar facility 12] received the notice of violation, but the Department chose 13] not to issue a violation to the Tonopah Egg Ranch for the 14] same issue of operating boilers without permits. 15] What I would like to do now is just briefly 16] mention the non-Title V permit -- minor permit 17] modification process. So if you look at Rule 220, there 18] is a section in this rule -- and I apologize. I really 19] had gone through the revised rules to do this testimony 20] and not so much the older rules. I believe it will be 21] section 405, permit revision procedures and then if you go 22] on to 405.3, non-minor permit revisions is kind of what 23] we're talking about and that's on page 21. So I 24] apologize. This was not a non-minor; this was a minor 25] permit revision.</p>	<p style="text-align: right;">Page 28</p> <p>1] would be on page five, a timely permit application also, 2] and duty to supplement or correct application, action on 3] application and then that's the process the agency 4] follows. 5] I would like to point out a couple of 6] particular steps, and on page six, on 301.4, step C, it's 7] kind of towards the top, "To be complete, an application 8] for a new permit or a notification of a permit revision 9] shall contain an assessment of the applicability of the 10] requirements established under rule --" let's go to B 11] right above it, very top page. "To be complete, an 12] application for a new permit or a notification of a permit 13] revision shall contain an assessment of the applicability 14] of the requirements of Rule 241, permits for new sources 15] and modifications to existing sources of these rules and 16] shall comply with all applicable requirements of Rule 241, 17] permits for new sources and modifications to existing 18] sources of these rules." 19] Now, through my records request, that 20] assessment has not been provided. However, if you look 21] down, the control officer has a lot of leeway on minor 22] permit modifications, and if we go on down to F, "The 23] completeness determination shall not apply to revisions 24] processed through the minor permit revision process." 25] So it would be, I think, pretty arbitrary</p>



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1] not to require the assessment of Rule 241 and weigh that  
2] requirement and allow the minor permit modification to be  
3] processed. Maybe, maybe not the control officer has the  
4] ability to do that. I would hope no; it's pretty  
5] important, but if we look at the -- there's a checklist  
6] that is done on minor permit modifications, and that  
7] actually is part of the exhibit that the county has  
8] provided at the end of the TSD, and on that checklist, it  
9] does not talk about an assessment of the applicability of  
10] the requirements of Rule 241, permits for new sources and  
11] modifications to existing sources. So as near as I can  
12] determine from trying to follow this process, that  
13] assessment has not been done.  
14] If we then go to Rule 200, it talks about  
15] standards for applications, and this is on page nine.  
16] "All permit applications shall be filed in the manner and  
17] form prescribed by the control officer. The application  
18] shall contain all the information necessary to enable the  
19] control officer to make the determination to grant or to  
20] deny a permit or permit revision which shall contain such  
21] terms and conditions as the control officer deems  
22] necessary to assure a source's compliance with the  
23] requirements of these rules. The issuance of any permit  
24] or permit revision shall not relieve the owner or operator  
25] from compliance with any federal laws, Arizona laws or

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1] these rules, nor does any other law, regulation or permit  
2] relieve the owner or operator from obtaining a permit or  
3] permit revision required under these rules."  
4] Again, it does not -- there is no exemption  
5] for animal feeding operations. So the rules are very  
6] specific, and hopefully the county would have followed  
7] these rules that the hen houses are stationary sources and  
8] should be permitted as such or at least appear on the  
9] application as a stationary source for the county's  
10] valuation.  
11] MR. HISER: Although, Mr. Blackson, if you  
12] look at the paragraph above that, you will see that there  
13] is a section entitled exemptions that says,  
14] "Notwithstanding these rules, the following sources shall  
15] not require a permit unless the source is a major source  
16] or unless operation without a permit would result in a  
17] violation of the act", and then under Section 308.3, it  
18] says, "Agricultural equipment used in normal farm  
19] operations, for the purposes of this rule, does not  
20] include equipment that will be classified as a source that  
21] would require a permit under Title V of the act or would  
22] be subject to a standard under 40 CFR parts 60 or 61."  
23] Do you agree?  
24] MR. BLACKSON: It does say that; I agree,  
25] but --

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1] MR. HISER: So is it then -- are you going  
2] to be demonstrating to the Board then this is a facility  
3] that you believe should be classified as a major source  
4] under Title V of the act?  
5] MR. BLACKSON: I believe I'm restricted to  
6] talk about the minor permit modification.  
7] MR. HISER: But the minor permit revision is  
8] at a source that would or would not be subject to Title V.  
9] I guess that's my question.  
10] MR. BLACKSON: I believe in my pre-hearing  
11] disclosure with my calculations, I demonstrated that, and  
12] I believe that our expert will also demonstrate that, but  
13] I would like to point out that this says agricultural  
14] equipment, not agricultural stationary sources.  
15] MR. HISER: So your testimony is there is a  
16] difference between equipment and stationary sources?  
17] MR. BLACKSON: Yes, there is a difference.  
18] For example, agricultural equipment could be a tractor,  
19] and I believe there's some references in Arizona Revised  
20] Statutes that do talk about that.  
21] MR. HISER: Just in the interest of your time  
22] management, you're about halfway through your allotted  
23] hour and a half.  
24] MR. BLACKSON: Then I think what I'll do is  
25] I will skip ahead, and I do have more to say, but I would

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1] like to talk about the fugitive, non-fugitive. And I  
2] would also ask for the Board's indulgence. This is a  
3] pretty important issue and setting a time element on this  
4] may be difficult. You may not get all the information  
5] that you really need to make a decision at the end of the  
6] day.  
7] So fugitive, non-fugitive does seem to be at  
8] the heart of this and there is a definition that we would  
9] find in the 40 CFR or the county rules. "Fugitive  
10] emissions means those emissions which could not reasonably  
11] pass through a stack, chimney vent or other functionally  
12] equivalent opening."  
13] Well, the hen houses which are stationary  
14] sources does have an opening. It is a building. It's got  
15] a roof; it's got three sides and one side to the east is  
16] open and they have actually reduced that opening a little  
17] bit by putting some fabric up there, so that opening is a  
18] vent. So all of the emissions coming out of that building  
19] are passing through a vent or if you think maybe that  
20] opening is too large for some reason to call it a vent,  
21] but it's a vent, how much would you shrink it down to some  
22] arbitrary definition of what a vent is or what a vent  
23] isn't? But, of course, you can always go back and say  
24] that that opening in that building, large or small, is a  
25] functionally equivalent opening and it exhausts new source

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1] review regulated pollutants from that building.  
2] So since NSR pollutants pass through a vent  
3] into the ambient atmosphere, that causes those emissions  
4] to be non-fugitive, and I believe that the EPA has  
5] actually even taken a position on that.  
6] If we look at the Buckeye Farms egg-laying  
7] poultry operations, the EPA clearly considered those hen  
8] houses to be a building and a vent when they issued the  
9] consent agreement to Buckeye Farms.  
10] I would also like to touch base quickly  
11] about ARS 49.457 and this talks about best management  
12] practices, and there is a definition of a regulated area  
13] in there at the very bottom of the statute and it does  
14] talk about a regulated area has to be an area A or it has  
15] to be in a non-attainment area, and I would like to  
16] introduce an e-mail that the permitting supervisor also  
17] agreed that the Tonopah facility is not in the regulated  
18] area and he had a map on that e-mail note. It may not be  
19] attached, but for the sake of time, I think I'll just move  
20] forward, and if you're not in a regulated area, then you  
21] don't have a regulated agriculture activity.  
22] MR. SWAN: Is that document included as an  
23] attachment to your disclosure statement or are we reading  
24] it for the first time? What is the answer?  
25] MR. BLACKSON: The answer is the map below

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1] showing PM-10 non-attainment area. Tonopah facility falls  
2] outside these areas and therefore does not appear to  
3] qualify for coverage under Ag BMP. I've been supporting  
4] that position. I believe it's very clear in the  
5] regulations if the legislature wanted the BMP's to be  
6] statewide, they would not have defined the area as such,  
7] the regulated area.  
8] CHAIRMAN LEONARD: Mr. Blackson, I'm sorry  
9] to interrupt. It won't detract from your time. The  
10] question I think was whether the e-mail you're discussing  
11] was something that was included in the initial submittals  
12] or if this is new, like the previous e-mail was?  
13] MR. BLACKSON: I'm sorry. It is new and I  
14] would like to motion to -- oh, I'm sorry it was. It was,  
15] but just to make sure, I would like to pass it out.  
16] MR. SWAN: We have no objection to the  
17] introduction of that evidence.  
18] CHAIRMAN LEONARD: The e-mail will be  
19] admitted then.  
20] MR. BLACKSON: With that, I think it would  
21] be best to conclude my testimony.  
22] CHAIRMAN LEONARD: Mr. Swan, do you have any  
23] questions of Mr. Blackson?  
24] MR. SWAN: I have none, sir.  
25] CHAIRMAN LEONARD: All right.

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1] MR. BLACKSON: Thank you.  
2] CHAIRMAN LEONARD: Mr. Blackson, are you  
3] calling another witness?  
4] MR. BLACKSON: Yes, I would like to, yes. I  
5] would like to call a witness, Kathy Martin, to be a  
6] technical witness. I would -- there's some information I  
7] have about her previous testimony and deposition history  
8] and a resume type of information to validate that she's an  
9] expert witness.  
10] MR. HISER: Mr. Swan, do you have any  
11] objection if this witness is an expert?  
12] MR. SWAN: No, I do not.  
13] MR. HISER: Miss Martin, if you'll take the  
14] witness stand.  
15] MR. HISER: Miss Martin, I'd ask you state  
16] your name, please, for the record.  
17] THE WITNESS: My name is Kathy Jean Martin  
18] K-A-T-H-Y, J-E-A-N, M-A-R-T-I-N.  
19] MR. HISER: Miss Martin  
20] KATHY JEAN MARTIN,  
21] a witness herein, having been first duly sworn by the  
22] Certified Reporter to speak the truth and nothing but the  
23] truth, was examined and testified as follows:  
24]  
25]

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1] EXAMINATION  
2] BY MR. BLACKSON:  
3] Q. Miss Martin, are you familiar with the matters  
4] before the Board today?  
5] A. Yes.  
6] Q. And could you describe how you prepared today to  
7] testify?  
8] A. Clearly, you have almost a half a foot of  
9] information in front of you. I have been working with Dan  
10] Blackson off and on getting prepared for this hearing  
11] today, and so I have read the Maricopa County regulations,  
12] the rules, right, 100, 200, such that you've been looking  
13] at already, some of the applicable Clean Air Act  
14] requirements under the 40 CFR, as you have incorporated  
15] them by reference in your own rules.  
16] I have looked at some filings by the  
17] Maricopa County Board with respect to non-attainment for  
18] ozone, some of the history of whether or not you've had  
19] attainment for eight-hour ozone, how you lost it and now  
20] you're in a moderate attainment zone, for kind of getting  
21] a feel for what's going on in this particular part of the  
22] country.  
23] I have read the materials and e-mails and  
24] copies of permits, permit application, management plan,  
25] the aquifer protection plan, et cetera, all related to the

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1] Hickman Tonopah egg laying facility that Mr. Blackson  
2] acquired through a public information request, and he  
3] forwarded a lot of those documents on to me for review.  
4] I've looked at the pre-hearing disclosure  
5] statements by both Mr. Blackson and by the county and the  
6] exhibits in the books. I have looked at some of the  
7] preliminary jurisdiction things and stuff like that, so  
8] hopefully, almost that entire stack that you have in front  
9] of you as well, in order to be here today, that relate to  
10] this particular place, and then, of course, I did some  
11] outside research just on air quality and egg laying  
12] facilities that is the -- a lot of the research that has  
13] been done through the EPA, the National Ambient Air  
14] Quality Emission Compliance Program, the NAEMS program.  
15] I also -- because I've been working on CAFO  
16] issues since 1997, I have actually been following  
17] emissions and studies for I think it's almost 20 years,  
18] 21 years in all parts of the country. I've worked in 21  
19] states in the United States with respect to CAFO issues.  
20] So I'm also familiar with quality issues with respect to  
21] CAFO's, including egg layers, and I've been involved in  
22] some litigation on egg-laying facilities in California.  
23] So I am aware of what some of your  
24] neighboring air quality divisions are doing with respect  
25] to air permits for egg-laying facilities and looking at

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1] the peer-reviewed or at least the published research that  
2] has come out on various egg-laying facilities in Indiana,  
3] Iowa, Ohio.  
4] Q. And have you visited the Tonopah Egg Ranch?  
5] A. Yes, I have. I've been around it twice.  
6] Q. And did you identify any -- what stationary  
7] sources have you identified from that visit, from your  
8] review?  
9] A. Right. Just to be clear when -- even though you  
10] have my CV, very quickly, I worked for the State of  
11] Oklahoma in the small business assistance program related  
12] to the Clean Air Act amendments, and so in my tenure with  
13] the Oklahoma Department of Environmental Quality, I  
14] received training on the Clean Air Act Title V permit  
15] writers training program. Also, they have a -- had  
16] various training programs through the University of Texas  
17] at Arlington on identifying stationary sources, and then  
18] also, on each type of best available control technology,  
19] such as bag houses, wet scrubbers, dry scrubbers, how to  
20] do stack testing, et cetera, and that was all part of my  
21] job working in the small business assistance program,  
22] helping both small business and larger companies in  
23] Oklahoma understanding the requirements under the Clean  
24] Air Act amendment of 1990. So that was actually my job  
25] for three years in Oklahoma.

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1] And so from that, I'm going to say that I  
2] identified some stationary sources. I just wanted to let  
3] you know it just didn't come out of nowhere. It came from  
4] some background and work knowledge.  
5] So when you're looking at a facility, you're  
6] going to identify all the sources, and then once you've  
7] identified the sources, try to see what their potential to  
8] emit is, whether they're operating 24/7, whether they have  
9] some sort of synthetic bottleneck where you only have one  
10] shift versus three shifts, et cetera, and you get all of  
11] that lined out and start trying to estimate emissions from  
12] whatever actual data or emission factors or whatever. So  
13] then you have a full picture of what we're calling an air  
14] assessment or now it's going to be called a new source  
15] review.  
16] So the stationary sources that I identified,  
17] of course, would be all of the barns associated with the  
18] egg-laying operation, all of the lagoons associated with  
19] the manure or waste water storage, and then, of course,  
20] you have your feed delivery system, your generators and  
21] the boilers that the county has identified. Of course, I  
22] had to identify these from the street but if, you know, we  
23] had a site inspection, we may find something else,  
24] correct.  
25] Q. What are the types of air pollutants that would

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1] be emitted from the poultry operation at the Tonopah Egg  
2] Ranch?  
3] A. Right, and I believe Dan provided some exhibits  
4] on -- some research on typical air pollutants from poultry  
5] operations and from egg-laying operations and, of course,  
6] I have done similar reading and research in the last 10,  
7] 15 years but you're looking at basic categories.  
8] For today's hearing, we're going to be  
9] looking at particulates and volatile organic compounds.  
10] The particulates are from feed dust, dander, feathers, the  
11] animals just in their movement producing particulate  
12] matter, and the particulate matter that we're concerned  
13] about is PM-10 which is actually very, very small, not  
14] really visible to the naked eye but it's respirable and  
15] PM-2.5, which is even more respirable; then the volatile  
16] organic compounds which those come from the degradation  
17] from the manure, the feces and urine which all comes from  
18] the same place in a bird, but that fecal material, as it  
19] degrades, it's going to release volatile organic  
20] compounds, right?  
21] As proteins degrade, that's the natural  
22] course and then there is also, of course, ammonia and that  
23] is from the degradation of the urease part of fecal  
24] material. It is a very, very large amount from poultry.  
25] That's a big part of their emissions, and then other

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1] things that are normal like carbon monoxide from their  
2] breathing, methanes and other things that are not going to  
3] be spoken of here today. So we're looking at particulates  
4] and VOC's today.  
5] Q. Is there anything else you would like to comment  
6] about the stationary sources and pollutants?  
7] A. No.  
8] Q. So let's talk about emissions. What is an  
9] emission factor?  
10] A. Okay. An emission factor is some kind of a  
11] number you can multiply by, like, in this case, with an  
12] animal feeding operation, the number of birds at the  
13] facility. So the emission factor that we're looking at  
14] here today would be pounds of that pollutant per bird per  
15] day or per year. There's other kinds of emission factors  
16] that could be a function of ventilation rate, et cetera,  
17] but we are just looking at some simple emission factors to  
18] show that there's definitely many ways at the facility to  
19] trigger 110 per year criteria pollutant in order to have  
20] further investigation.  
21] Q. How can emission factors be derived? And perhaps  
22] as part of that, you'd like to talk about the potential to  
23] emit, a guide for small business which should have been  
24] provided in everybody's packet and this would be 13 --  
25] page 13 to maybe 16?

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1] A. And this is the SBAP the EPA published in  
2] October 1998 and what this Small Business Assistance  
3] Program was supposed to do is provide an interpretation of  
4] the Clean Air Act for small business people, right. This  
5] is not a policy wonk document. This is supposed to be,  
6] you know, putting it into regular people's terms so small  
7] business owners can understand whether or not they need to  
8] get a permit, and one of the great things about it is in  
9] this document on page 13 it says how do I determine if I  
10] have a potential to emit? How do I figure out, you know,  
11] what my emissions are? And so the EPA gives the hierarchy  
12] of data, which is basically a science or engineering  
13] function, the hierarchy of data in any permitting program.  
14] Also, the air quality permitting program would be to look  
15] at measured data from the existing site, correct, or  
16] measured data from a similar site, emission factors based  
17] on actual sites, okay, that isn't in a book; that's just  
18] applied, whatever, then some modeling and then, of course,  
19] there's always lesser guesses, okay.  
20] So what we are trying to say today is that  
21] the county was claiming that there was -- there was no  
22] defined emission factors by the EPA. They were doing a  
23] large nationwide study. It was very extensive. They went  
24] to great pains through the National Compliance Order to  
25] get people to sign up and to get some sort of amnesty

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1] during the study in order to determine a final emission  
2] factor for animal feeding operations. There would be  
3] several different factors, one for each type of species  
4] that once that number was determined, then every single  
5] CAFO or animal feeding operation in United States, every  
6] last one of them had to look at that number and calculate  
7] the emissions. There would be no exceptions. Okay. So  
8] that's when the study is finally done and the emission  
9] factors are published.  
10] Where we're at right now, the study has been  
11] done. There are publications of the emission factors  
12] developed by Dr. Heber out of Purdue with respect to the  
13] poultry emissions. It was a robust study. I believe when  
14] you look at the exhibit provided by the county, there's  
15] nearly 400 pages that shows how robust Dr. Heber's study  
16] was looking at emissions from poultry facilities, and so  
17] we are saying and also the EPA says that, yes, you may  
18] have fantastic beautiful data in the future, but you go to  
19] the dance with the girl you got. You go with the data you  
20] have at hand. We're not going to wait indefinitely for  
21] perfect information, so -- and I think we have some  
22] documents in the exhibits that say that by the EPA with  
23] respect to the Buckeye egg facility or with the California  
24] dairy study. I don't remember the exhibit numbers right  
25] off the bat, but they're in there.

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1] So the EPA has been pretty clear all along,  
2] even though they know they have the study going on on the  
3] side, that they still expect people to use -- to generate  
4] emission numbers using the best available numbers that  
5] they have at hand, contrary to what the county would like  
6] to do which is wait forever, right.  
7] So what we're saying is there is a beautiful  
8] study out there with these beautiful numbers and there are  
9] also consent orders by EPA for poultry egg-laying  
10] facilities that have estimated emissions from 2005. So  
11] these are emissions that went through a legal process and  
12] a consent order and so, you know, they've been tested to a  
13] certain extent way more than just a graduate student's  
14] thesis, for example, and that those numbers were available  
15] to generate a range of emissions from the Tonopah facility  
16] which Mr. Blackson had calculated and shown in quite  
17] laborious detail in his pre-hearing disclosure.  
18] And so my purpose here today is -- as a  
19] professional engineer is to say that I've reviewed those  
20] emissions calculations. I have reviewed his source  
21] material and his methodology of how he presented the  
22] information to you, and I believe that he has been fairly  
23] accurate in what he has presented to you, and he's shown  
24] time and time again, no matter whether you went to the  
25] NAEMS study emission factor, whether you went to the

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1] Buckeye factor, whether you went to the -- was it the Iowa  
2] factor, I think, whether you were in particulate material  
3] or whether you were at VOC's, hitting over a hundred tons  
4] per year, sometimes in the 200, 300 tons per year, using  
5] existing emission factors, some of which have been  
6] available for 11 years now, right.  
7] So there's absolutely no reason from this  
8] day forward to ignore the fact that you have major  
9] stationary sources at the facility that generate more than  
10] 100 tons per year and that there needs to be a decision  
11] made now whether you continue to provide a non-Title V  
12] permit by basically ignoring this information, you know,  
13] forever, I guess, or you take a stand at the procedure we  
14] are in, the permitting process, which is creating a new  
15] permit, a modified permit that at that point, you take  
16] that opportunity to remedy and go forward under whatever  
17] permit program is required after you do the new source  
18] review, correct, which is what we're asking to have done,  
19] okay?  
20] MR. BLACKSON: Also, sometimes a visual can  
21] be very helpful and there's an EPA document that I  
22] recently found that talks about AP-42 and it has a chart  
23] on it that kind of shows a hierarchy of emission factors,  
24] and I would like to be able to enter it in as an exhibit.  
25] I did quite a bit of research over the weekend. In

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1] particular, if you would look at page four --  
2] MR. SWAN: The county has no objection to  
3] this document.  
4] CHAIRMAN LEONARD: Okay. We'll admit that.  
5] BY MR. BLACKSON:  
6] Q. So, Miss Martin, if you could share a little bit  
7] more information about emission factors and how some are  
8] perhaps more accurate than others?  
9] A. Right. I believe we got this from the published  
10] AP-42, okay, right, and what's nice about Figure 1 is it  
11] includes that engineering judgment I was speaking of where  
12] we like to look at, you know, actual emission values  
13] obviously, then going to source category emissions models,  
14] and then the reliability gets better as you get closer to  
15] your facility. And there is additional cost, but what we  
16] have access to is unique because we have a national  
17] emission study which was paid for, you know, several  
18] million dollars was paid for by the participating  
19] producers. So we have access to great data without having  
20] to make one particular applicant do some testing, right.  
21] Q. Okay. Thank you. So you talked about the  
22] calculations that I prepared during the pre-hearing  
23] disclosure and you found those to be understandable and  
24] acceptable calculations; is that correct?  
25] A. Correct. I reviewed the calculations. There's

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1] several in this disclosure, three or four different places  
2] and I've looked at all of them. So unless we want to go  
3] through them one by one, I think if you read the  
4] disclosure, you know what I'm talking about. I have  
5] looked at his source materials that are also exhibits, and  
6] as an engineer, I believe he made good solid decisions on  
7] how to transfer some of the emission factors to apply to  
8] Tonopah.  
9] Q. Do you believe that it would have been prudent  
10] for the county, as part of the minor permit modification  
11] process, to actually conduct sampling of the existing hen  
12] houses at the Tonopah Egg Ranch?  
13] A. Well, you're in a unique position. Once that  
14] facility's constructed and in operation, no matter whether  
15] it's an egg-laying facility, to a power plant or anything  
16] else, once the facility is in operation, everyone has  
17] access to taking samples, right? And that is built into  
18] the Clean Air Act, right?  
19] So, yes, and the fact that Hickman's is  
20] constructed, the Tonopah facility is in operation, some  
21] types of measurements could have been made and you could  
22] have followed some of the more complex methods listed in  
23] the national emission study or you could have come up with  
24] some lesser cost measures, but it can be done, of course.  
25] Q. So you're saying that there is a variety of ways

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1] to estimate the emissions from all the sources used in a  
2] new source review process for this minor permit  
3] modification at the Tonopah Egg Ranch? The county would  
4] not be limited to one particular emissions factor; they  
5] could have measured -- AP-42 doesn't have a particular  
6] emission factor, but they could have measured -- they  
7] could have used industry; they could have used the small  
8] business approach. There's a variety of ways that  
9] emissions factor could be selected?  
10] A. Correct. And let me tell you it is the same  
11] thing that happens during evaluation of a nutrient  
12] management plan. There's like three different ways to  
13] calculate the amount of nitrogen in the manure from three  
14] different well-known peer review sources, and you can  
15] calculate a range from low to medium and just say  
16] somewhere in between is where this facility lies or you  
17] can be conservative and prepare a nutrient management plan  
18] according to the maximum nutrient value.  
19] So similarly, you can look at a variety of  
20] emission factors that were available, find a range and  
21] then either pick an average or somewhere closer to the  
22] higher end to be conservative, meaning you're making sure  
23] you're not underestimating emissions; you might be a  
24] little bit overestimating emissions and see if that  
25] triggers a different permitting program. If it doesn't,

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1] it doesn't. But if you've never done the calculation at  
2] all, which is what we have determined through the e-mails  
3] that Mr. Blackson collected during his public information  
4] requests and reading through what he got back from the  
5] county, there is no proof of any calculations. And, in  
6] fact, I think he got an e-mail response back from  
7] Jacqueline or something that just said no calculations, no  
8] calculations, no calculations. So there was no doubt that  
9] it was not done. We wanted to make sure we didn't miss  
10] something.  
11] Q. Would you like to discuss the flaws in the  
12] county's arguments that they need to wait for official  
13] emissions factors from the EPA in order to determine the  
14] new source review pollutant emissions from the Tonopah Egg  
15] Ranch?  
16] A. Right. And this kind of goes to the county's  
17] pre-hearing disclosure where they are pointing to Indiana  
18] and saying, well, Indiana did -- in fact, in one of the  
19] e-mails from the county, Mr. Sumner said, well, Indiana  
20] did this study on air emissions and they didn't change  
21] Indiana air quality rules to require permits. However,  
22] that Indiana study which was done at Purdue by Dr. Heber  
23] was not a study for Indiana. It was a study for the  
24] national compliance program, first of all.  
25] Second of all, I've been working in Indiana

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1] since 2004, and I know a lot of people in the water  
2] quality division of IDEM and I know if they have something  
3] called a non-regulatory policy statement, that that's not  
4] enforceable in the State of Indiana, okay. So that's --  
5] which is the document that I believe the county provided  
6] as saying, look, they're saying right there in this  
7] brochure that the EPA doesn't have a final emission  
8] factor, so we're just going to permit boilers and  
9] generators, so I think we'll do the same thing that  
10] Indiana does, which is an interesting idea to go all the  
11] way across the country to Indiana when you can just go  
12] right next door to California who has 30 some odd air  
13] quality county boards such as yourself that are delegated  
14] authority that do have large-scale animal feeding  
15] operations that were involved and are involved in issuing  
16] permits for animal feeding operations that were under  
17] stern compliance eyes of EPA by creating an ag exemption  
18] from the Clean Air Act.  
19] That's who you need to look for as the -- as  
20] your future because that's where somebody is actually  
21] doing the permitting they're required to do. The state  
22] attempted to provide a statewide exemption for  
23] agricultural facilities and EPA came back and say, uh-huh,  
24] you can't do. That's in violation of your SIP.  
25] So that's who you need to go to for

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1] guidance, the people who are being out there issuing  
2] permits and at least being set straight on how these  
3] permits need to be operated versus another state who also  
4] just threw up their hands and said we're not going to do  
5] it until somebody makes us do it. So I find that to be a  
6] fatal flaw in that particular part of the argument.  
7] I think you have plenty of information in  
8] the research out of the national compliance. I think you  
9] have resources in the EPA itself, not only in region nine  
10] but in other regions such as where Ohio is and how they  
11] handle the Buckeye Egg that you could reach out and you  
12] could get access to their emission factors and understand  
13] how barns are stationary sources and how you estimate air  
14] emissions from not only poultry facilities but other  
15] housed animal feeding operations in the state.  
16] Q. Does the Clean Air Act have an exemption for  
17] animal feeding operations?  
18] A. No, it does not, and that's been stated over and  
19] over again by EPA in the federal register and other legal  
20] documents such as Buckeye Egg and the dairy in California.  
21] So it's not just my opinion. This is by reading EPA's own  
22] words.  
23] Q. Are there any other observations, comments that  
24] you'd like to make about the stationary sources emission  
25] calculations or county's application or regulations

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1] related to the facility?  
2] A. Let me just look real quickly at my notes here.  
3] I did just want to give a short chronology of events for  
4] the record because we didn't really provide anything like  
5] that in the -- it might help.  
6] You know, the original permit was issued  
7] November 2014, and I believe in December of 2014 there was  
8] a new ozone standard that EPA came out with in December.  
9] In the following year, the application for the minor  
10] permit modification was submitted, also November of 2015,  
11] so don't mix those dates up.  
12] Then meanwhile, this Board made the rule  
13] changes to incorporate TSD and that was official in  
14] February 2016; maybe not this board but Maricopa County,  
15] sorry, and then in May of this year EPA changed the status  
16] of Maricopa County from marginal to moderate for the  
17] eight-hour ozone. So that's going on in the background of  
18] this permit, this minor modification permit being issued,  
19] which was then issued June 10th of 2016 this year with the  
20] responsiveness summary. And then of course Maricopa  
21] County is required to have their moderate ozone plan to  
22] the EPA by January 2017 which is just a couple of months  
23] from today. That includes your reasonably attainable  
24] control technology, your RACT, for the eight-hour ozone.  
25] So while this Hickman facility permit was

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1] going on, we know that you had attained -- ozone, you  
2] know, attainment, it was like getting within reach. Then  
3] you had a bump in Central Phoenix so now you're in  
4] moderate so you have some other issues going on. The main  
5] issue related to ozone of course is VOC's. Here is a  
6] permit, an air permit that completely ignores hundreds of  
7] tons of VOC's. So when you look at the documents that  
8] were presented to EPA in your state implementation plan  
9] where you have your pie charts that show what are the  
10] sources of VOC's in Maricopa County non-attainment area,  
11] those -- that pie chart is based on invalid, you know, not  
12] accurate data, right. So maybe you're not seeing the full  
13] impact of some of the animal feeding operations around the  
14] Phoenix area.  
15] You know, of course, we have a lot of  
16] dairies down in cowtown, but I just wanted to bring that  
17] up; that under the -- underneath this permit issue that  
18] we're talking about today, you also in this county have  
19] some pretty serious issues with the ozone and it's all  
20] related to VOC's.  
21] So I am not sure I am going to give you any  
22] recommendations, but I believe that there's an -- it's  
23] possible to estimate PM-10 and VOC emissions. It's  
24] possible that this facility could be considered from now  
25] on to be a Title V facility and therefore start

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1] incorporating, but you need to do a new source review.  
2] You need to do that. The applicant and the county needs  
3] to do that and make sure that there's some interaction,  
4] right. We can't do that for you. We're just showing you  
5] that there's definitely signs that it's what you should  
6] have done in the past, right.  
7] Q. What's your opinion on fugitive and non-fugitive?  
8] The county has taken a position that the emissions are  
9] non-fugitive.  
10] A. Oh, sure, yes, and I wanted to add on to  
11] something that Mr. Blackson said in his testimony where he  
12] was just talking about the opening of the barns. And if  
13] you have ever been out by Hickman's, the typical  
14] egg-laying barn is a very long barn, and one end is where  
15] they have manure storage and they have an opening there  
16] that's permanently opened so trucks can come in and out to  
17] get manure, but also so that the ventilation fans inside  
18] the barn are blowing the air pollution from inside the  
19] barn out of the barn through the ventilation fans across  
20] the manure to dry them; thereafter creating more emissions  
21] from the drying of the manure, okay.  
22] This is fine. Nobody is saying you can or  
23] cannot do that, but the actual vents for these barns are  
24] those ventilation fans. There is movement from where the  
25] animals are laying the eggs, the birds are laying the eggs

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1] where there's -- manure is deposited where it's initially  
2] volatilized. The particulate matter is also generated in  
3] there from the bird movement, their feathers, et cetera,  
4] the feed. Especially when they do feeding, there's a  
5] definite rise in particulate material.  
6] If you want to look at some of the diagrams  
7] in Dr. Heber's report on the Indiana poultry facilities,  
8] all of those pollutants have to be removed from the  
9] presence of the birds or it will harm them. It's bad for  
10] their health. It could kill them. So the vents take that  
11] air out and blow it out of the barn, and in this  
12] particular design, it's blown out of the barn across the  
13] manure pile.  
14] So I believe as a stationary source, the  
15] vent that you're looking for starts at the ventilation  
16] fans and then it's combined into one, and then there's  
17] many ventilation fans, and it's combined into one vent at  
18] the opening of the barn, and those are not fugitive  
19] emissions coming out of the fans; those are non-fugitive  
20] emissions and should be treated as such.  
21] MR. HISER: For the benefit of the Board,  
22] because we have not been there to see it, like you have  
23] been, so the barn is a long structure. One end of it is  
24] sort of quasi open and has the manure storage, manure  
25] handling in that, and then is it your testimony that there

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1] are fans at the end of this long barn which are blowing  
2] the air from the laying areas across the manure pile and  
3] out the end of the building? Is that what you're saying?  
4] THE WITNESS: Let me answer your question.  
5] Two things. There's actually an exhibit that has some  
6] photographs of the barns and that was -- and we also have  
7] some photographs that the citizens took, but the county  
8] has some inspection reports that have the pictures of the  
9] outside of the barns, but let's look at these two  
10] exhibits.  
11] CHAIRMAN LEONARD: While you're passing it  
12] off, Mr. Blackman, do you have an estimate how much longer  
13] you may be? The only reason is if we're getting close, we  
14] can finish and then take our break or if you think you're  
15] going to go a little bit longer --  
16] MR. BLACKSON: I don't expect to be much  
17] longer. I have a couple estimates on the other federal  
18] register I would like for Miss Martin to respond to and  
19] we'll be done.  
20] CHAIRMAN LEONARD: Not a problem. I am also  
21] taking into account the fact our court reporter hasn't had  
22] a break.  
23] THE WITNESS: Okay. So we're looking at  
24] Exhibit 34 -- 33 and 34 which are color photographs that  
25] were taken by the citizens from the road, and let me make



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1] sure I'm --  
2] MR. HISER: Why don't you just hold them up  
3] so we can see?  
4] THE WITNESS: I wanted to make sure I hadn't  
5] mixed them all together. So that was my first concern.  
6] What we're looking at here is at the corner of, oh, gosh,  
7] 415th Avenue and Indian School Road. That is photo number  
8] one, so that would be Exhibit 34, and then the other one  
9] is -- and what you're going to see here is -- this is  
10] probably taken at the same time and these are extras.  
11] These -- and according to an e-mail by Kelly Reed, these  
12] photographs were taken October 20th, 2016, both of them  
13] were.  
14] So that we're standing north and east of the  
15] facility probably, something like that, because these  
16] openings that you see, with the -- like a gray shading at  
17] the top, that's actually a fabric awning. It would lay  
18] flat if the ventilation fans were not blowing, but when  
19] the ventilation fans are blowing from inside the barn,  
20] they push this fabric out. It kind of billows out like a  
21] balloon. And you see at the bottom of each barn a wide  
22] opening and that's where the trucks can come in and out to  
23] pick up the manure to take to the Arlington facility.  
24] In one of the exhibits -- in both exhibits,  
25] you can see some opacity just from like fugitive emissions

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1] from trucks going on a dirt or gravel road.  
2] BY MR. BLACKSON:  
3] Q. Actually, this is -- this photograph -- both  
4] these photographs are from the operation of loading the  
5] manure that's piled inside the building with a front-end  
6] loader into a truck to be hauled off.  
7] A. Sorry about that.  
8] MR. SWAN: Mr. Chairman, I believe Mr.  
9] Blackson is testifying at this time.  
10] MR. BLACKSON: I apologize.  
11] THE WITNESS: If we had longer to prepare --  
12] to provide this case to you properly, then there could  
13] have been someone come up and talk to you about the  
14] photographs, et cetera. We were there yesterday, and we  
15] saw truck traffic on the other side of the barns which is  
16] not where the opening is. So I apologize but, yes, so  
17] he's correct. This is during manure load-out. I  
18] apologize. We're both a little frazzled trying to get  
19] this all in a couple of --  
20] CHAIRMAN LEONARD: Just so we can come back,  
21] I want to make sure that the question that was asked isn't  
22] lost. We were talking about the venting and how the  
23] venting might come across, and then when we get to that  
24] point, I think the next point is something along those  
25] lines. It was a question of making clarification for the

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1] Board as to what your thoughts were on that.  
2] THE WITNESS: And I believe the attorney  
3] asked if the ventilation fans were at the end of the  
4] barns. They are inside internally in the barns. They are  
5] on the other side of the manure storage so that they are  
6] internally in the barns. They're not at the end. Other  
7] types of laying barns, they are actually like on the sides  
8] of the barns.  
9] BY MR. BLACKSON:  
10] Q. Miss Martin, to conclude, do you believe the  
11] fugitives from the hen houses -- or the emissions from the  
12] hen houses are fugitive or non-fugitive?  
13] A. From the hen houses coming through the  
14] ventilation fans, they are non-fugitive. Items like the  
15] trucks going on the gravel roads, those would be  
16] traditional fugitive.  
17] Q. Okay. Thank you. There is an exhibit that you  
18] have for the federal register. It's volume 70 and I  
19] believe it might be Exhibit 13, and what this exhibit is  
20] is the animal feeding operations consent agreement and  
21] final order and on page 4950 -- or page 4959, in the  
22] left-hand column about in the middle I'll go ahead and  
23] read this and then I will ask Miss Martin a question.  
24] The EPA says, "To the extent that certain  
25] pollutants from AFO's are regulated under the Clean Air

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1] Act and are emitted in quantities that exceed regulatory  
2] thresholds, EPA can and will require AFO's to comply with  
3] all applicable Clean Air Act requirements including  
4] limiting those emissions where appropriate."  
5] So, Miss Martin, do you believe that the EPA  
6] is intending to continue enforcement and has the authority  
7] to enforce permitting for poultry operations?  
8] A. They have the authority to do permitting and they  
9] also have the authority to do enforcement.  
10] Q. Thank you. And also --  
11] A. Maybe I should clarify. The enforcement -- any  
12] enforcement restriction would be given to the people who  
13] signed up for the national compliance agreement. There is  
14] some restriction on what the EPA will do to sue them but  
15] folks that had not signed up or dropped out of the program  
16] lost that privilege of amnesty.  
17] Q. Also in the same document on page 4961 on the  
18] right-hand column kind of towards the upper middle, "EPA  
19] recognizes state and local agencies are undertaking  
20] efforts to improve emissions estimation methodology for  
21] animal feeding operations. EPA supports continuing action  
22] to improve emissions information for all sorts of source  
23] categories and will use the best information available as  
24] we implement our programs. EPA also supports state and  
25] local efforts to demonstrate improved emission redirection



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1] strategies and recognizes the value of state and local  
2] control requirements tailored to the needs of specific  
3] geographical areas."  
4] Do you believe that this is a message to  
5] encourage state and local agencies to continue to develop  
6] emission factors and regulate AFO's?  
7] A. Yes.  
8] Q. Would you like to add anything else to your  
9] testimony?  
10] A. Let me check my notes one more time. I think  
11] that will be fine.  
12] MR. BLACKSON: We're done, whatever the  
13] official term is.  
14] CHAIRMAN LEONARD: Well, if I might say,  
15] understanding that this is somewhat a new process, well  
16] done. At this point, what I'd like to entertain is taking  
17] a ten-minute break so everybody can get up, stretch their  
18] legs, use the restroom.  
19] When we come back, there will be an  
20] opportunity to the Department to proceed, and depending on  
21] how long that takes, we will move into the next phase. So  
22] let's adjourn for approximately ten minutes and then we'll  
23] go from there.  
24] (Recess taken, 3:24 p.m. to 3:37 p.m.)  
25] CHAIRMAN LEONARD: All right, folks. Miss

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1] Martin, I hate to be officious for you, but I remind you  
2] you're still under oath.  
3] If the Department would like to go ahead and  
4] cross at this point, this would be your opportunity.  
5] MR. SWAN: The Department has no questions  
6] to ask this witness.  
7] CHAIRMAN LEONARD: Okay. Well, you're good  
8] to sit down.  
9] Mr. Swan, you're up.  
10] MR. SWAN: I would call as our witness,  
11] Richard Sumner.  
12] MR. HISER: Mr. Sumner, if you could state  
13] your name and address for the record.  
14] THE WITNESS: My name is Richard Alan  
15] Sumner. My address is 1156 East Grandview Road, in  
16] Phoenix, Arizona.  
17] RICHARD ALAN SUMNER,  
18] a witness herein, having been first duly sworn by the  
19] Certified Reporter to speak the truth and nothing but the  
20] truth, was examined and testified as follows:  
21] CHAIRMAN LEONARD: Mr. Swan.  
22]  
23] EXAMINATION  
24] BY MR. SWAN:  
25] Q. What is your current position at the Department?

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1] A. I am currently the air quality permitting  
2] manager.  
3] Q. Can you give the Board a summary of your  
4] educational and licensure background, please?  
5] CHAIRMAN LEONARD: Mr. Swan, get pretty  
6] close to the mike.  
7] A. Education-wise, I received my Bachelor's Degree  
8] in civil engineering from the University of Missouri,  
9] Raleigh in 1977 and subsequently received my Master's  
10] Degree in civil engineering from the same university in  
11] 1981 with an emphasis in environmental engineering.  
12] So when I left college after the Bachelor's  
13] Degree in 1977 and began work in the refining and chemical  
14] industry, I began addressing air quality issues there.  
15] Even when I was in college, I had the opportunity to begin  
16] doing some air quality work. One of the papers that I  
17] wrote was -- my junior year in 1976 was one addressing  
18] ozone depletion, the hole in the stratospheric ozone. So  
19] I have seen a few air issues come and go along through the  
20] years.  
21] After about ten years in chemical refining,  
22] we got here to Arizona, went to work in the printing  
23] industry, as an environmental engineer for a printing  
24] company, and the primary issue we dealt with there was air  
25] quality issues.

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1] From there, I moved on to a phone making  
2] company; again, additional air issues, particularly VOC's  
3] and how to address those, from making phone cups, and then  
4] moved to consulting. We did a myriad of types of projects  
5] here in companies that we dealt with. One of the more  
6] interesting ones was how to address emissions from  
7] companies that make rocket fuel for jet ejection seats.  
8] So I have seen some interesting things from all different  
9] types of air quality issues.  
10] And I moved on to El Paso, Texas to work  
11] with what was known as El Paso Corp. which is now a part  
12] of Kinder Morgan, and there I initially started as a staff  
13] engineer working primarily with air quality Title V issues  
14] for compressor stations, promoted to the manager over --  
15] environmental manager and then I was promoted to the  
16] director of environmental health and safety at the  
17] corporate level.  
18] And so that in about 2003, left El Paso  
19] which was then located in Houston, moved to California for  
20] a slight career diversion and spent five years as a pastor  
21] at a church in California up until 2008, and then I came  
22] back to Arizona, resumed my environmental engineering  
23] career, started with the county as a staff engineer, was  
24] promoted to supervisor over the Title V large source  
25] program and then promoted in 2013 to the position I

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1] currently hold which is the permitting division manager.  
2] Q. Thank you. Today the focus of our hearing is the  
3] Hickman Egg Ranch facility in Tonopah located --  
4] MR. HISER: Mr. Swan, before you get any  
5] further, is the Department's wish to qualify Mr. Sumner as  
6] an expert witness?  
7] MR. SWAN: Yes, it is.  
8] MR. HISER: Is there any objection from you,  
9] Mr. Blackson?  
10] MR. BLACKSON: Well, I guess I do. He  
11] started off as a -- requested to be a lay witness, not an  
12] expert witness and now it's changed. So I guess I would  
13] like to maybe question a little bit more about his  
14] expertise when it comes to permitting.  
15] MR. HISER: Mr. Swan.  
16] MR. SWAN: Okay.  
17] BY MR. SWAN:  
18] Q. Richard, your permitting experience, we've heard  
19] about it here with the county. We can come back to it if  
20] necessary. In your earlier positions, was there  
21] permitting experience that you gained in those?  
22] A. Yes, there was. All along, whether it's been  
23] starting with the time in the refinery, whether working  
24] with the initiation of the Title V program in the late  
25] nineties, I worked on probably, I would guess, 40 to 50

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1] Title V permits with El Paso Corp. during that tenure and  
2] then we went through probably 4- to 500 permitting actions  
3] a year here in the county. So that that total would  
4] probably be somewhere over a thousand during my time here  
5] at the county.  
6] Also, I would like to mention I am a  
7] registered professional engineer in the State of Arizona.  
8] MR. SWAN: Is there any need for further  
9] questioning?  
10] MR. BLACKSON: I have no further questions.  
11] CHAIRMAN LEONARD: Are you maintaining your  
12] objection or are you prepared to allow him in as an  
13] expert?  
14] MR. BLACKSON: I'm prepared to allow him as  
15] an expert witness. Thank you.  
16] MR. HISER: Thank you. Just to clarify the  
17] record. Thank you. Mr. Swan, back to you.  
18] BY MR. SWAN:  
19] Q. What type of business is the Hickman Egg Ranch  
20] involved in?  
21] A. Yeah, they are in the -- in the business of  
22] poultry egg producing.  
23] Q. Can you walk us through the permitting history of  
24] the Hickman Tonopah operation as it concerns Maricopa  
25] County Department of Air Quality?

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1] A. Yes. Okay. I believe you heard a little about  
2] that earlier. Just to reiterate some of those points is  
3] that in 2014, we received the initial permit for the  
4] Hickman facility. That permit was granted, I believe, in  
5] November of 2014 and it was subsequently requested to be  
6] modified, revised in 2015 with a minor permit revision  
7] that was submitted, I believe, also in November of '15.  
8] That permit was then issued in June of 2016.  
9] Q. The first air quality permit issued to Hickman,  
10] what classification was that? Was it Title V or  
11] non-Title V?  
12] A. That permit was a non-Title V permit. You know,  
13] we've had a significant amount of discussion about what  
14] types of emissions that are to be considered and not  
15] considered here so far today, and so when we looked at  
16] that initial permit, you know, we looked at the equipment  
17] that was being there, and there was 12 emergency engines  
18] for part of that original permit and also looked at other  
19] pieces to the facility that were -- that were present, the  
20] animal feeding operations which includes the manure piles,  
21] includes the hen houses, includes the lagoons, and as has  
22] been communicated, we considered those to be fugitive  
23] emissions for various reasons.  
24] Number one, the type of opening that's in  
25] the building, we believe those couldn't be reasonably

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1] captured as a point source and should be considered as  
2] fugitive. You've seen pictures of the front of the  
3] building and the pictures that were taken there, and as I  
4] look through some of the documents on the nutrient  
5] management plan, there are dimensions for the buildings  
6] there that you have in the record that was provided by Mr.  
7] Blackson that I believe the width of the opening of those  
8] buildings is 84 feet. So it's not exactly a small  
9] opening. The height of the building at its peak is about  
10] 40 feet before the springs were added to help to reduce  
11] the emissions that might be coming out.  
12] So this is not a small -- I tried to put  
13] 84 feet into perspective, and since it is the middle of  
14] football season, I figure that's about a 28-yard  
15] completion from Carson Palmer to Larry Fitzgerald. So  
16] it's a pretty good gain. So that it's not a small  
17] opening. So from that aspect of it, we looked at those as  
18] being fugitive.  
19] You know, we also considered some of the  
20] work that had been done as part of the hen house studies,  
21] and EPA and this is -- we relied on this. We looked at  
22] the permits was -- that EPA had said these were open  
23] issues, whether these were fugitive or non-fugitive, and  
24] they would look at those at a later date and begin to  
25] provide some emission factors with those and that that was

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1] a national issue that would really require a national  
2] solution. So we relied on that when we put the permits  
3] together originally.  
4] Therefore, the main things that we looked at  
5] were the engines that were part of that permit and then  
6] with the minor mod, we added eight more emergency engines  
7] that are diesel fired; in addition to that, two boilers.  
8] So, again, there's some discussion about the boilers, and  
9] those were there at the beginning but were only picked up  
10] in the minor modification. So those were added into the  
11] permit as part of the minor modification at that time.  
12] Q. Can you tell us, beginning with the receipt of  
13] the application for the minor permit revision, what  
14] processes did you go through, you and your staff go  
15] through to evaluate that application?  
16] A. Whenever a permit application comes in, our first  
17] step is to run it through an administrative review to  
18] determine whether everything from the administrative  
19] perspective is in place: the name is there; is it signed,  
20] addresses, contact, just very, very basic information.  
21] Once that is complete, we are satisfied we  
22] have sufficient information from which to be able to move  
23] the permit to the next step, it goes on to the -- assigned  
24] to a permit engineer. That permit engineer then begins  
25] the technical review process to see if we have the

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1] technical information with which to process the permit to  
2] determine, you know, whether it is non-Title V, Title V  
3] permit, what rules apply, whether things like NSR apply,  
4] what national maximum standards might apply, all those  
5] types of things. We -- you know, we look at, whenever the  
6] permit comes in, to be able to determine what rules to  
7] apply, which of our local rules and what standards to  
8] apply once the emissions are determined.  
9] So a permit engineer goes through, evaluates  
10] all of those types of things. We go through several  
11] iterations internally to look at the draft permit. That  
12] permit engineer would develop -- and in that draft  
13] process, you know, there may be several moves back and  
14] forth, and you've seen some of the internal e-mails that  
15] were part of that sausage-making process where the permit  
16] engineer may put something down and someone else will look  
17] at it and say you missed that or why isn't this in there  
18] or why is that in there? And so you've seen some of those  
19] pieces that we will look at until -- our objective is to  
20] get it right, get the permit to be complete as to what  
21] information should be in there, what should not be in  
22] there and how we are then able to issue that final permit.  
23] Before we get to that step, in the internal  
24] review process, we look at it among the engineering staff.  
25] The supervisor can be -- can be in on this one and then we

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1] also will have compliance look at it. We'll have the  
2] compliance staff take a look because they look at things  
3] maybe a little differently than the engineers would  
4] because they're boots on the ground, in the field more so  
5] than us.  
6] Then once we have a draft permit that we are  
7] satisfied with internally that we feel meets all the legal  
8] requirements, that meets all the rule requirements, meets  
9] all the technical requirements, then we will forward that  
10] on to the source to give them an opportunity to look at  
11] it, because whenever -- you know, they are obviously more  
12] knowledgeable of the source than we are. So if there's  
13] something that we miss or misinterpreted, we want the  
14] source to be able to have the opportunity to identify that  
15] so that we can correct it. So once all that is done, then  
16] we will issue the permit.  
17] Now, in the case of this minor modification,  
18] there is a step that is not normal for us, and I'm not  
19] sure I've ever seen a minor modification have a public  
20] hearing. But because of the elevated public interest and  
21] also because of Mr. Blackson, we posted it for a formal  
22] 30-day public notice time which would not be normal for --  
23] our rules would not require this for a minor modification,  
24] but we did in this case and so -- to have opportunity for  
25] people to provide input, to comment on the permit and to

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1] give us -- give us their thoughts or inputs as to what  
2] should be there.  
3] And so in that process, we not only did the  
4] public -- or posting for public notice, we also then held  
5] a public hearing to give, again, additional oral  
6] opportunity for people to -- opportunity for oral comments  
7] on the permit, not just what is submitted in writing.  
8] So after all those were completed, we  
9] addressed the comments that were made and put those  
10] together in response to comments and that puts us in a  
11] position then to issue the permit.  
12] Q. You mentioned that you were the head of the  
13] permitting department and quarterback of a staff of people  
14] that work for you. But with regard to this particular  
15] minor permit revision, how actively involved were you in  
16] the process of evaluating it and the analysis that goes  
17] on?  
18] A. Yeah, I had more involvement in this one than I  
19] would typically because of the elevated interest that was  
20] there, and so we wanted to make sure that we had as many  
21] people look at it and make sure we got it right. So I was  
22] probably more involved in this than I would be typically.  
23] Q. In particular, you were involved in the  
24] calculations that were made by the Department?  
25] A. Yeah. So when the calculations -- the staff

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1] engineer would do that, and then all those calculations  
2] would then be reviewed by both the permitting supervisor  
3] and by me also to make sure that those were correct.  
4] Q. Let me step back to one thing that I meant to ask  
5] you which was the -- you said one of the steps you look at  
6] on a routine basis -- and I assume what you described was  
7] both what the Department or your staff does in a typical  
8] evaluation as well as what you did for the Hickman  
9] evaluation; is that correct?  
10] A. Right.  
11] Q. What about -- one of the steps would be assuring  
12] that the application is complete. Was there anything  
13] special or anything particular about the Hickman  
14] application in that regard?  
15] A. Yes. With the -- with regard to the completeness  
16] of the application, it's been noted earlier that there's a  
17] section known as Z-M that was missing information, and so  
18] that's a section where the applicant has the opportunity  
19] to be able to describe and calculate what the emissions  
20] would be from the source, and in this case, it was not  
21] filled out by Hickman's in their initial application, in  
22] the minor modification application, and that's not  
23] unusual. As a matter of fact, it probably happens more  
24] that it's not filled out than it is because many sources  
25] do not have the sophistication or tools to accurately be

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1] able to calculate and predict what those emissions would  
2] be, and so -- but on the other hand, if we have sufficient  
3] information to be able to calculate that, we will do so.  
4] And where we had the information on the  
5] engines and on the boilers, as to what size they were,  
6] what types they were -- for instance, the engines were  
7] tier three engines. So with those, there are certified  
8] EPA emission factors that come with those. So even though  
9] the specific emission calculations weren't filled out, we  
10] had the opportunity then from the description of the  
11] equipment to be able to know what the emissions were. And  
12] even if someone does fill that out, we will always rerun  
13] those anyway because we're really -- we're not going to  
14] take the applicant's word for what those emission  
15] calculations are. We're always going to confirm those,  
16] even if they were provided by the applicant.  
17] Q. Earlier there was testimony about the emission of  
18] boilers in the minor permit revision. Were the emissions  
19] of the boilers ultimately included? Were they included in  
20] the final emissions calculations?  
21] A. Yes, the boilers were included in there and,  
22] again, part of that sausage-making process, when drafts  
23] are moving back and forth among staff and supervisors,  
24] different ones, we may have pieces that are missing. So  
25] those were probably missing at one step of the drafting of

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1] the TSD when that passed through, and we tried to get that  
2] information and understand what -- once we understood that  
3] the boilers were there and be able to appropriately add  
4] those to the emissions for the facility.  
5] Q. Let's get back to emissions calculations. What  
6] emissions were calculated?  
7] A. So the emissions that we calculated were from the  
8] point sources, from the non-fugitive emissions which would  
9] be from the boilers and from the generators. We  
10] characterized the emissions from the CAFO, from the animal  
11] feeding operations, again, the lagoons, the hen houses and  
12] the manure piles, and we captured those as being fugitive  
13] emissions. And even if they had been -- so fugitive  
14] emissions, whether there's a determination whether they're  
15] part of a Title V determination or not, was pointed out  
16] earlier from Rule 100, I believe 200.60, if I remember  
17] correctly, of the determination of a major source.  
18] When you have fugitive emissions, you  
19] include those only if the major source is one of those 28  
20] categorical sources listed there in 200.60. So we went  
21] through the first part of that where it talked about  
22] fugitive emissions and calculations that go into the major  
23] source determination, but fugitives for sources that are  
24] not listed as categorical in that group, and you see the  
25] 28 of them that are there, all other fugitive emissions

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1] are not included for major source purposes for operations  
2] that are not on that list. In this case, hen houses are  
3] not on that list, so therefore, fugitive emissions were  
4] not considered to be part of that.  
5] Q. So in conclusion, it is your opinion that all of  
6] the emissions pertaining to the minor permit modifications  
7] were properly calculated?  
8] A. Yes, we do believe those were properly  
9] calculated, and we had plenty of reason to not include  
10] those. We've talked a little bit about what other states  
11] are doing. You heard about that. When we look at the  
12] State of Arizona, basically farm operations are exempted  
13] from Arizona, whether -- that is the law today. Recently  
14] as last year, the NSR rules for the State of Arizona were  
15] revised. That was not deleted from any NSR rules at that  
16] time, and so we believe that what the prevailing rule is  
17] that we would not include those here; that even though  
18] they may be included in other jurisdictions, as we look at  
19] the data that's out there and see that, we just see it is  
20] as not reliable enough for us to run out ahead of where  
21] EPA is.  
22] We look at how EPA regulates things. We see  
23] there are a number of ways they do that. They may do that  
24] on the basis of different types of rules or new source  
25] performance standards of which there's probably maybe 150

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1] or a hundred new source performance standards out there,  
2] none of which pertain to this type of operation. There  
3] are max standards, maximum available control technology  
4] standards, maybe another 150 of those, none of which  
5] pertain to this operation.  
6] There are control technique guidance  
7] documents that whenever EPA wants to regulate something,  
8] they will provide that as a means for sources to be able  
9] to determine what the emissions are and how to handle  
10] those. There's been no CTG's or control technique  
11] guidance documents provided for this. There are a number  
12] of ways that EPA will regulate these different type of  
13] sources, and we did not see that that had occurred in any  
14] of those.  
15] We also looked at the State of Indiana that  
16] has been mentioned and whether the tests were run by the  
17] state or not. They were run by Purdue University which is  
18] in the State of Indiana, chose a facility there, and after  
19] they looked at that, we looked at, yeah, this is a similar  
20] type situation to what we have, and it seemed reasonable  
21] at that time to say, you know, if they're looking at this,  
22] they are disregarding -- they are not going to regulate  
23] the animal feeding operation, the emissions only that come  
24] from the point source equipment, it seemed like a  
25] reasonable conclusion for us to reach in doing likewise

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1] here with this facility.  
2] Q. I'd like to dwell for a minute on NSR. Mr.  
3] Blackson mentioned surprise that it didn't appear that you  
4] had considered NSR, new source review. Can you tell us  
5] again how -- or tell us for the first time what your  
6] review was and what consideration was given to the  
7] potential applicability of NSR to this facility under this  
8] permit modification application?  
9] A. Sure. NSR is new source review, and it applies  
10] in non-attainment areas. Where the facility is located,  
11] it is located in the non-attainment area for ozone. For  
12] ozone -- the precursor for ozone are NOx, nitrogen oxide,  
13] and VOC, volatile organic compound, is a precursor for  
14] ozone. So those are the pollutants that you would look at  
15] primarily under NSR.  
16] So the threshold for that would be -- for a  
17] major source in our current attainment status which is  
18] moderate, non-attainment of where we are, and so the  
19] threshold for that would be 100 tons per year. And  
20] looking at the point sources, the total NOx emissions  
21] under the minor modification are a total of just under  
22] 25 tons of NOx, so it is well below the NSR threshold for  
23] NOx.  
24] The VOC emissions from the engines and the  
25] boilers are like 1.2 tons. They are relatively small.

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1] So, you know, we concluded that they were well below the  
2] NSR thresholds. As we previously mentioned, we did not  
3] look at the -- any fugitive emissions as part of the major  
4] source determination under NSR because it is not a  
5] categorical source, and not being a categorical source, we  
6] did not look at the fugitive emissions.  
7] Q. Did the Department perform a Rule 241 assessment  
8] and could you explain what that is?  
9] A. Yeah. Rule 241 is -- we affectionately refer to  
10] it as our local BACT rule, best available control  
11] technology, and that -- and so when looking at this  
12] facility, the total emissions for BACT would be -- or the  
13] threshold for BACT, for NOx would be 25 tons at the time  
14] because we were dealing under the old rules. That has  
15] since been moved up to 40 tons per year. At that time, it  
16] was 25 tons per year. From the original permit, the  
17] emissions of NOx from the original permit was about  
18] 60 tons so BACT did not apply, and so Rule 241 would not  
19] be triggered.  
20] With the minor modification, about another  
21] additional eight tons of NOx was added and so we were  
22] still below 25 tons total which is really not even  
23] relevant because we'd only be looking at the modification  
24] anyway. The modification was only eight tons of NOx. So  
25] therefore, under Rule 241 -- and even though it's not

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1] spelled out explicitly in the TSD, as Mr. Blackson noted,  
2] you know, there's a fair amount of latitude with that, but  
3] we did look at those total amount of emissions and found  
4] that the BACT would not apply which would be the essence  
5] and the substance of Rule 241.  
6] Q. Would an NSR normally apply to a minor permit  
7] modification?  
8] A. No. You could not have NSR apply to minor permit  
9] modification because the definitions we looked at earlier  
10] would preclude that from occurring.  
11] Q. Mr. Blackson used emission factors to calculate  
12] the emissions from the Hickman process. Are those  
13] emission factors credible in your mind and based your  
14] analysis and expertise?  
15] A. You know, there are a myriad of emission factors  
16] out there that we have seen. I know, looking through one  
17] of the documents that was provided by Mr. Blackson in  
18] their disclosure of the 2006 study from Iowa State  
19] University, that showed just ammonia emissions, for  
20] instance, that are there. The EPA had estimated in that  
21] that the emission factors for ammonia should be like  
22] 435 --  
23] MR. BLACKSON: I object to this because  
24] ammonia is not permitted. It's not an -- I object because  
25] ammonia is not a permitted pollutant; it's not an NSR

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1] pollutant. You don't have to have a permit to release  
2] ammonia, but when you get into EPCRA and that sort of  
3] thing, then ammonia is in play.  
4] CHAIRMAN LEONARD: I'm going to overrule  
5] that objection only from the standpoint that there's --  
6] we're talking about credibility. If you have other  
7] concerns, again, you'll have the opportunity, as I  
8] mentioned, for cross so --  
9] THE WITNESS: But in those -- determination  
10] of those emissions, EPA would have a factor of 435 grams  
11] of ammonia per year per each hen and which I would think  
12] that European numbers in the Netherlands would be pretty  
13] credible. That range was ten to 83 grams per hen per  
14] year. So you can just see the massive variation that  
15] occurs in different emission factors that are out there  
16] depending under what circumstances that they were run.  
17] They range all the way from ten to 435 for the same type  
18] of emission factor. And so with that absence, we felt  
19] like that the emissions factors just really weren't there  
20] to do that.  
21] There's also a General Accounting Office  
22] report that was done, that was completed, and I believe  
23] this is also in our record. I don't know the page number  
24] right off. Do you guys have that over there handy that  
25] you can point these folks to, where the page number is on

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1] that? I believe it's somewhere probably page AQ600  
2] something. I can't remember what the final exact number  
3] is.  
4] Q. Can you identify the document again? I'm not  
5] sure I heard that.  
6] A. It's a document for the General Accounting Office  
7] where they evaluated concentrated animal feeding  
8] operations in looking at the studies that had been done,  
9] and their conclusion was that EPA -- or the title of the  
10] document was EPA needs more information and clearer  
11] defined strategies to protect air and water from  
12] pollutants of concern, and this was on the -- on the back  
13] side of the main study, the national air emission  
14] monitoring study that had already been done.  
15] So they had some conclusions about that  
16] report, if I may read those here. I have the page number.  
17] It is AQ0683, if that will help you find that in your  
18] documents, in our pre-disclosure documents that were  
19] provided.  
20] It says, "However, questions about the  
21] efficiency of the sites selected for the air emission  
22] study and the quality and quantity of the data being  
23] collected could undermine EPA's efforts to develop air  
24] emission protocol by 2011, and finally, while the study  
25] and resulting protocols are important first steps, the

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1] process-based model that more accurately predicts the  
2] total air emissions from an animal feeding operation is  
3] still needed. While EPA has indicated it intends to  
4] develop such a model, it has not yet established a  
5] strategy and timeline for this activity."  
6] And so, again, we're trying to look at the  
7] body of evidence that's out there. Are we running too far  
8] ahead to be able to come up -- use emission factors that  
9] may or may not have quality? And, again, our conclusion  
10] was the science just wasn't there yet. And when the  
11] science is there, we are -- we'll very actively and  
12] vigorously be able to enforce those and put those in the  
13] permit and apply those to the appropriate sources, but we  
14] believe at this time that those are not there yet.  
15] Q. The minor permit revision was to authorize the  
16] addition of boilers and eight emergency, small emergency  
17] generators as I recall, and both of those were  
18] characterized by the Department as point sources. Can you  
19] explain the determination in that regard briefly?  
20] A. Sure, because the emissions from those types of  
21] operations come through a defined stack, through a defined  
22] point in the equipment rather than some large amorphous  
23] opening that really has no opportunity to be captured,  
24] controlled or really even accurately measured. Some of  
25] the other literature that we have looked at, you know,

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1] talked about how difficult it is to measure just, in  
2] general, emissions from hen houses and those types of  
3] operations, that it's one of the great encumbrances to be  
4] able to quantify emissions that were out there, and  
5] whenever you're dealing with this type of operation, it is  
6] difficult to do.  
7] Again, we think that the science will get  
8] there, but we just don't believe that it's there yet for  
9] this type of point source that -- these are the point  
10] sources and the other -- all the rest from the animal  
11] feeding operation are fugitive emissions.  
12] Q. I'm getting close to the end of my questions.  
13] The Department has not promulgated rules addressing  
14] emissions from hen houses, manure piles and lagoons. Can  
15] you tell us why that is the case?  
16] A. At this time, that is not a source category  
17] that -- you know, that we have looked at, and so those  
18] emissions are not yet ones that we've elected to be able  
19] to quantify as we begin to work through different types of  
20] emissions that are out there.  
21] Q. Okay. This is my final question: Based upon the  
22] cumulative information you provided, based on calculation,  
23] characterization and legal requirements, did the  
24] Department apply proper permitting standards and  
25] procedures when analyzing and evaluating the minor permit

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1] revision?  
2] A. Yes, we did.  
3] MR. SWAN: I have no further questions.  
4] CHAIRMAN LEONARD: Mr. Blackson, if you'd  
5] like to cross.  
6] MR. BLACKSON: Yes, I would.  
7]  
8] EXAMINATION  
9] BY MR. BLACKSON:  
10] Q. Thank you, and, I apologize, I may skip around a  
11] lot and kind of --  
12] A. I do too, so that's all right.  
13] Q. I think we're going to get through it.  
14] Mr. Sumner, you've had training, right, on  
15] the permitting process? EPA offers some training that we  
16] talked about?  
17] A. Yes.  
18] Q. And how recent was that?  
19] A. Probably the last one was about probably two  
20] years ago where we went through NSR training and BFP  
21] training that's offered nationally by EPA.  
22] Q. Thank you. Can you show us in the Clean Air Act,  
23] is there an exemption for animal feeding operations?  
24] A. No, there is not an exemption in the Federal  
25] Clean Air Act for animal feeding operations.

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1] Q. Now, you said there was an exemption, if I heard  
2] correctly, an agricultural exemption. Can you cite what  
3] that exemption is?  
4] A. Yeah. The agricultural operations for poultry,  
5] for cattle, for pigs, for different types of animals,  
6] those are under the agricultural exemption under ag BMP's  
7] for the state, and so we did not regulate those.  
8] Q. So you must be talking about ARS 49-457, correct?  
9] A. Yes.  
10] Q. That exemption for all NSR pollutants?  
11] A. It's primarily for PM-10 and so the PM-10  
12] emissions then are ones that --  
13] Q. But not for BFP's?  
14] A. Under that exemption, no.  
15] Q. Now, you're saying it's an exemption. Perhaps  
16] you can read the definition of a regulated area. That  
17] definition will be at the very bottom. It's page six?  
18] A. I'm looking on the front page.  
19] Q. They change how it appears now.  
20] A. Regulated means Maricopa PM-10 particulate  
21] non-attainment area, any portion of area A that's located  
22] in the county with a population of two million or more  
23] persons and any PM-10 particulate non-attainment area  
24] established in this state on or after June 1st, 2009.  
25] Q. Does the word state or statewide appear in that

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1] definition of a regulated area?  
2] A. It does not.  
3] Q. Does the word county or countywide appear in it?  
4] A. County does.  
5] Q. Is it countywide, entire county?  
6] A. Area A or PM-10 particulate non-attainment area.  
7] Q. Is the Tonopah Egg Ranch in a regulated area?  
8] A. It is not.  
9] Q. Yet you apply BFP to the Tonopah Egg Ranch?  
10] A. That is correct, because we have received  
11] guidance from the state that PM emissions are of a  
12] statewide concern, and that even though this may  
13] specifically list deregulated area here, that they have  
14] taken the interpretation that this is a statewide concern  
15] and therefore they are going to apply BMP's to all areas.  
16] Given the county rules that exempt normal farm cultural  
17] operations from PM-10 regulations, then neither us nor the  
18] state would be able to have any activity and so the state  
19] has taken that activity there.  
20] Q. And all of this came from a SIP process where the  
21] EPA was going to come in and issue a SIP on agricultural  
22] activities and things?  
23] Q. The EPA was interested in implementing a federal  
24] implementation plan because there was a gap in these  
25] regulations.

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1] Now, the statewide concern does appear in  
2] that statute, if I'm not mistaken. They make a  
3] philosophical statement about statewide concern about  
4] particulate matter; is that correct?  
5] A. That's correct.  
6] Q. But yet the legislature decided that's not how a  
7] regulated area is defined, correct?  
8] A. I can't address what the legislature might have  
9] said.  
10] Q. Well, the legislature passed a statute, correct?  
11] A. That's correct.  
12] Q. Did the legislature include a statewide BMP  
13] policy for a regulated area?  
14] A. That -- I don't know what the legislature  
15] included. I knew ADAQ has, so we are kind of subservient  
16] to them.  
17] Q. Did the legislature in the definition of  
18] regulated area give ADAQ authority to make it statewide?  
19] A. No.  
20] Q. Did they give authority to Maricopa County to  
21] make it statewide?  
22] A. No.  
23] Q. Or countywide?  
24] A. Countywide, no.  
25] Q. Yeah. So the county is overreaching in this case



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1] applying a regulated area to the Tonopah Egg Ranch because  
2] it does not typically reside in a regulated area?  
3] A. Can you rephrase the question, please?  
4] Q. The Tonopah Egg Ranch does not reside in a  
5] regulated area, correct?  
6] A. It does not reside in a regulated area.  
7] Q. Physically located. So, Mr. Sumner, have you  
8] ever considered the emissions from the Tonopah Egg Ranch  
9] to be normal farm cultural activity?  
10] A. Yes.  
11] Q. And what is a normal farm cultural activity? Can  
12] you define that?  
13] A. I'd have to refer back to the rules to get the  
14] exact definitions, so it's probably there pretty close.  
15] Q. I can help you.  
16] A. Bet you could.  
17] Q. Can you read for us what this is?  
18] A. All agricultural activity by the owner, leasee,  
19] agent, independent contractor --  
20] CHAIRMAN LEONARD: Mr. Sumner, just remember  
21] to slow down.  
22] A. "Normal farm cultural practice. All activities  
23] by the owner, lessee, agent, independent contractor and/or  
24] supplier conducted on any facility or production of crops  
25] or in nursery plants, disturbances of field surface caused

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1] by turning stalks, tilling, fertilizing or harvesting are  
2] included in this definition."  
3] Q. So as part of the property, there are fields at  
4] the Tonopah Egg Ranch, so the fields would meet that  
5] definition?  
6] A. Correct.  
7] Q. Now, would the hen houses?  
8] A. Not in this particular definition.  
9] Q. So even though you stated that the normal farm  
10] cultural activity would apply, it doesn't meet the  
11] definition?  
12] A. Not in this particular area. I'm trying to think  
13] of the other -- it's defined in other places in the rules.  
14] I don't know if those are more expansive, so not off the  
15] top of my head.  
16] Q. This is an important point, so if you want to  
17] take some time to tell us what that is, I would appreciate  
18] it.  
19] A. We may have to come back to that. I know we have  
20] it defined other places other than this. What you have  
21] provided me, just for the record, is Rule 310.  
22] Q. Now, the permitting supervisor actually stated  
23] that he believed that the Tonopah Egg Ranch was not in a  
24] regulated area and the BMP's would not apply?  
25] A. Yes, and the context of that --

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1] Q. A yes or no, thank you.  
2] A. Yes.  
3] Q. Thank you. You made a statement about ammonia  
4] emissions. Can you also talk about, in the same vein, the  
5] PM-10 and the PM-2.5 and the VOC emission factors?  
6] A. Right. I just know that those were -- one of  
7] them that showed a rate variation. I know there is a  
8] large variation on the other factors that have been  
9] developed also. I don't have the exact numbers on those,  
10] but I know they have ranges on them in what is provided.  
11] Q. So that it is very possible that there might be  
12] some difficulty in measuring ammonia but they might carry  
13] over to measuring PM-10, PM-2.5 or VOC's?  
14] A. Yes. If I remember correctly from some of the  
15] ranges that are there, the PM numbers have a substantial  
16] range on those.  
17] Q. Now, you also talked about the -- this Indiana  
18] policy. You reached out and found this and that's not a  
19] rule, right? I think it says right on there it's not a  
20] rule?  
21] A. Yep.  
22] Q. Yeah. Did you research any other states?  
23] A. We looked -- I am trying to think of other states  
24] we looked at recently. Even since this started, we looked  
25] at a few more, looking at any of them that had specific

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1] rules, and I did not see any that gave specific emission  
2] factors for those.  
3] Q. Did you find any states that actually are  
4] regulating animal feeding operations air-quality-wise?  
5] A. I think I saw one report where there are about  
6] six states and most of those are regulating the H2 S1  
7] table that I saw.  
8] Q. What about California?  
9] A. I'm not sure what California is regulating.  
10] Q. But could you have reached out to California like  
11] you reached out to Indiana to find out?  
12] A. Yes.  
13] Q. Or Texas? Texas regulates issues of air quality  
14] permits for animal feeding operations. Did you talk with  
15] Texas?  
16] A. No.  
17] Q. Idaho?  
18] A. No.  
19] Q. Ohio?  
20] A. No.  
21] Q. The interesting thing about Ohio is the Buckeye  
22] Farms, and I think you probably prepared by looking at  
23] that consent order and the news release.  
24] A. Mm-hmm.  
25] Q. Would you agree that in order for the EPA to have



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1] issued that consent order, they must have determined what  
2] emissions factors are from those hen houses?  
3] A. Yes, and I know that there are places where that  
4] has been -- where that has been done but, again, our  
5] posture was that we're not there yet with the overall  
6] science and so we said those would continue to be looked  
7] at as fugitive emissions.  
8] Q. But based on the EPA activity, they're ready to  
9] act, right?  
10] A. They don't seem like it, because I mentioned  
11] earlier they haven't provided any control technique  
12] guidances and documents; they haven't provided any new  
13] source performance standards; haven't provided any MAC  
14] standards. They haven't provided anything that they  
15] typically do to underwrite the regulation of different  
16] types of industries.  
17] Q. However, you're not limited to issuing permits  
18] just to those facilities? A source doesn't have to be  
19] categorized to receive a permit?  
20] A. That is correct.  
21] Q. All right. And if we go back to the Buckeye  
22] Farms, the EPA very clearly demonstrated that you can  
23] proceed and permit those facilities, and somehow, did you  
24] reach out to the EPA for emission factors?  
25] A. Yes, I believe we did talk to region nine on that

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1] so --  
2] Q. And could you share that conversation?  
3] A. Yeah, there was -- they didn't provide any  
4] additional guidance to us, and we provided information on  
5] Hickman's. I believe that's in some of the records there  
6] that we have provided to Hickman's.  
7] Q. And when did you do that?  
8] A. I don't remember the date off the top of my head.  
9] Q. When the initial permit or the minor permit --  
10] A. I think it was probably the minor permit process.  
11] Q. I'd like to talk about fugitive emissions, and I  
12] think both of us have cited to the Federal Register with  
13] the consent agreement for animal feeding operations, and  
14] in that agreement, and I'll paraphrase, the EPA had said  
15] that we're not going to make decisions on fugitive  
16] emissions at this time; we'll do that later.  
17] So there's a range of fugitive emissions,  
18] isn't there? For instance, you can have a dust devil  
19] going across a vacant lot versus a power plant that has a  
20] stack, fugitive emissions versus non-fugitive emissions;  
21] would you agree with that?  
22] A. I am not sure what I would be agreeing to.  
23] Q. Give us an example of non-fugitive emissions.  
24] A. Anything that goes -- you know, in this case what  
25] we were looking at would be the engines that would go

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1] through a stack so --  
2] Q. The engines, the diesels go through a stack?  
3] A. The diesel engines, yeah, they have a stack on  
4] those.  
5] Q. Oh, okay. And what would be -- not citing the  
6] hen houses, what would be a non-fugitive example, an  
7] extreme non-fugitive example?  
8] A. Extreme?  
9] Q. Sure.  
10] A. I'm not sure I want to define what extreme --  
11] Q. What about a wind blowing across a vacant lot, is  
12] that fugitive or non-fugitive.  
13] A. It would be fugitive; that would be fugitive.  
14] Q. Okay. So we have a wind blowing across a vacant  
15] lot is fugitive and a stack from a diesel is non-fugitive.  
16] Now, when we start to move to the middle, does it get  
17] easier or harder to differentiate between fugitive and  
18] non-fugitive?  
19] MR. SWAN: Before you answer that question,  
20] I'm questioning whether this line of questioning isn't  
21] beyond the scope of my direct examination of Mr. Sumner,  
22] so I ask the Board to consider that.  
23] CHAIRMAN LEONARD: Mr. Blackson, I don't  
24] want to put words in your mouth. You're asking the  
25] Department to provide examples of fugitive versus

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1] non-fugitive events in relation to how they may or may not  
2] have applied that to the minor permit revision?  
3] MR. BLACKSON: No, I'm not. I guess I'm  
4] trying to lay the groundwork that there's a range from  
5] fugitive to non-fugitive, and as you get to the middle  
6] ground, it's more difficult to sort out which is fugitive  
7] and non-fugitive. And I believe that's where the EPA is  
8] right now and that's why they have not given guidance.  
9] They have a very clear opinion of a hen house by the  
10] consent order at Buckeye.  
11] CHAIRMAN LEONARD: With respect then to the  
12] Department's objection, I'll overrule that. I believe  
13] that Mr. Sumner has already discussed this, and so again,  
14] understanding that we're talking about cross, just try and  
15] make the point.  
16] Mr. Sumner, answer as you deem appropriate.  
17] Please proceed.  
18] You can ask the question just as you did  
19] before.  
20] MR. BLACKSON: I'd like to gather myself for  
21] a second. And it might help if the court reporter could  
22] help me out.  
23] (The record was read by the reporter.)  
24] BY MR. BLACKSON:  
25] Q. So is it more difficult, as you get to the middle

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1] of non-fugitive and fugitive, to differentiate which is  
2] which?  
3] A. Yes.  
4] Q. So would you say, yes or no, that it's possible  
5] that EPA hasn't issued guidance because that middle  
6] ground, perhaps where you have an animal in a covered  
7] corral, that you don't know whether that's fugitive or  
8] non-fugitive yet?  
9] A. Correct. It can be difficult to define.  
10] Q. It can, but if we look at the EPA actions such as  
11] the Buckeye Farms, it's clear that the EPA, since they  
12] issued a consent order believe that the emissions from  
13] those hen houses were non-fugitive?  
14] A. Yeah, it was clear in that situation.  
15] Q. All right. Thank you. I would like to talk  
16] about vents then, and we've both cited the statute about  
17] buildings and vents and functional openings, and you make  
18] a very good point that the opening at the Hickman hen  
19] house is very large, right?  
20] A. Mm-hmm.  
21] Q. So if you start to shrink it down, when does that  
22] opening become a vent?  
23] A. That would just be part of the judgment that we  
24] would employ in making that determination. There's not a  
25] hard-and-fast number which is why some are regulated in

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1] some places and some are not regulated in others because  
2] there is -- there is a spectrum there.  
3] Q. Is there any regulatory basis for saying what the  
4] size of the vent is or is not?  
5] A. I think the modifier at the beginning of the  
6] definitions is reasonable, what is reasonable.  
7] Q. What about a functional opening? How large can a  
8] functional opening be?  
9] A. That's also a term of art to be determined on  
10] what that would be.  
11] Q. So it's just as reasonable to say that that  
12] opening is a vent as it's not a vent, versus one person  
13] and another?  
14] A. Correct.  
15] Q. And so I'm not sure if I'll be allowed to do  
16] this, but a comparison of another facility that you  
17] permitted that doesn't have an opening like that, so they  
18] are vents? If the design was different, there could be a  
19] vent in that building then, in your opinion?  
20] A. Yeah. We're going to look at every situation  
21] individually.  
22] Q. But again, when we look at the EPA and their  
23] actions with Buckeye Farms, they clearly decided that  
24] whatever opening is in a hen house is a vent and they  
25] issued that consent order according to that. Would you

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1] agree with that?  
2] A. Yes.  
3] Q. So somehow there has to be some ultimate  
4] determination of the size of the vent in a functional  
5] opening?  
6] A. I think we would both agree on that one.  
7] Q. Actually not. An opening is an opening; a  
8] functional opening is a functional opening, so we probably  
9] would not agree, no matter how large or how small. Sorry  
10] if I'm testifying. I don't mean to do that so I'll stop.  
11] So, Mr. Sumner, you said you got pretty  
12] involved with this minor permit modification. So can you  
13] describe where these fans are in the building and what  
14] they do and maybe how big they are?  
15] A. As I understand, the fans are probably, what,  
16] about three quarters of the way through the building, more  
17] toward the east end and they're there to blow through the  
18] manure piles as they come off of the -- when the manure  
19] comes off of the conveyer belts, be able to dry those out  
20] and to reduce the moisture in those.  
21] Q. Are the fans pulling air across the hens then?  
22] A. Right. They are blowing from west to east.  
23] Q. And where are the hens?  
24] A. They're behind those on the east side on the  
25] various levels, on the west of the fans.

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1] Q. And then the manure piles are on the east side?  
2] A. East side of the fans.  
3] Q. And the fans are blowing across that. Is there  
4] particulate matter being picked up by that ventilation and  
5] blown out of the building?  
6] A. Yes, there is.  
7] Q. And what is the purpose of those fans? Can you  
8] say?  
9] A. Yeah, my understanding is to dry the manure piles  
10] to make those really -- as I understand, to reduce any of  
11] the emissions from those.  
12] Q. Do they serve a purpose for the birds?  
13] A. The fans?  
14] Q. The fans, yes, sir.  
15] A. Yes. They're also to keep the birds cool which  
16] is the purpose of the emergency generators that they are  
17] there as part of the process, so in case the power goes  
18] down, the emergency generators are there to make sure that  
19] the birds will stay cool.  
20] Q. Do those fans also remove pollutants, NSR  
21] pollutants?  
22] A. Yes, they would move pollutants across there.  
23] Q. So the fans would bring in fresh air and through  
24] forced ventilation remove the pollutants?  
25] A. They would bring in fresh air through the west

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1] open end of the building out through the -- for the most  
2] part, opened east end of the building.  
3] Q. Are the hen houses stationary sources?  
4] A. We would not consider those to be stationary  
5] sources.  
6] Q. And why would they not be stationary sources?  
7] A. Because of the fugitive emissions from those.  
8] Q. Fugitive emissions in the definition of a  
9] stationary source?  
10] A. I'd have to go back and look again.  
11] Q. Let's do that. I think that would be in  
12] Rule 100.  
13] A. Yeah, let's go ahead and look at it. I'm not  
14] seeing the definition of stationary source in what you  
15] handed me there. I see a major source but I don't see  
16] the stationary source.  
17] Q. Actually, we might have to go to the CFR 51.165.  
18] CHAIRMAN LEONARD: For the interest of  
19] expediting this, I believe you're looking for Rule 100,  
20] section 200.105, page 29.  
21] MR. BLACKSON: All right. Thank you. It is  
22] in Rule 100.  
23] THE WITNESS: All right. So Rule 100,  
24] 200.105, "Stationary source. Any source that operates at  
25] a fixed location and that emits or generates regulated air

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1] pollutants."  
2] BY MR. BLACKSON:  
3] Q. Are the hen houses in Tonopah Egg Ranch  
4] stationary sources?  
5] A. Yes, they would be stationary sources.  
6] Q. Thank you. You had commented earlier that there  
7] actually was an assessment of the applicability of the  
8] requirements of Rule 241 as part of the process. Is that  
9] documented?  
10] A. We did not document that, as we just looked and  
11] saw that the emissions were below the thresholds that we  
12] looked at with regard to the point sources; that they were  
13] below the thresholds so therefore it was obvious that we  
14] didn't document that in the TSD.  
15] Q. Is that a normal practice?  
16] A. Pretty much.  
17] Q. So how would you show compliance with your  
18] permitting process through your rule if you don't document  
19] it? For example, you have a checklist for completeness.  
20] Why would you not document an assessment of applicability?  
21] A. We would just be looking at the emissions. They  
22] are below 25 tons so that, again, it's one of those things  
23] where it's obvious that it would not require any further  
24] discussion so they would be below any of the thresholds.  
25] Q. But how would you ever demonstrate it?

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1] A. By the amount of emissions that are listed in the  
2] tables in the TSD.  
3] MR. BLACKSON: I'm done. Thank you.  
4] CHAIRMAN LEONARD: All right.  
5] MR. SWAN: I have a couple questions on  
6] redirect.  
7] CHAIRMAN LEONARD: Mr. Swan, you're up on  
8] redirect.  
9]  
10] EXAMINATION  
11] BY MR. SWAN:  
12] Q. Okay. Mr. Sumner, EPA is the governing body for  
13] this type of activity, so why would you have reached out  
14] to other states to see what they are doing in this area?  
15] A. Right. EPA is where we take our ultimate  
16] guidance from and look for ultimate guidance. Sometimes  
17] it's valuable to see what other states may or may not be  
18] doing.  
19] Q. Okay. But it's -- is it for precedent? Is it to  
20] establish what regulations would govern the activity or is  
21] it just to see what others are doing in the area, given  
22] the fact that EPA has not nailed down its opinion and not  
23] issued regulations in this area?  
24] A. Yeah, whenever it's an area like this that is in  
25] flux. I think it's well established here today that this

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1] is a developing area, so we're trying to see kind of  
2] what's out there, what are other people doing.  
3] Q. But it's not required looking at other states?  
4] It's informative, but not required?  
5] A. Right, that's correct.  
6] Q. I'm looking at ARS -- two sections of ARS 49-457  
7] the first is P5(a) and if I can just read that small  
8] paragraph to you. I have a question for you about it.  
9] 5(a) says "Commercial farming practices that may produce  
10] PM-10 particulate emissions within the regulated area,  
11] including activities of a dairy, a beef cattle feed lot, a  
12] poultry facility and a swine facility." I forgot to read  
13] above it. "Regulated agricultural activities means", and  
14] then it leads into commercial farming practices. It  
15] specifically mentions poultry facilities. Is that where  
16] the Department found the exemption for hen houses?  
17] A. Correct, yeah, when we looked at all the  
18] different farm type operations and that is the basis for  
19] that; that would be in that definition.  
20] Q. The other provision of 49-457 is subsection O  
21] which reads as follows: "The regulation of PM-10  
22] particulate emissions produced by regulated agricultural  
23] activities is a matter of statewide concern. Accordingly,  
24] this section preempts further regulation of regulated  
25] agricultural activities by a county, city, town or other

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1] political subdivision of this state."  
2] Does this not mean the county is expressly  
3] prohibited from regulating emissions from hen houses as it  
4] is an agricultural activity? Is that your interpretation  
5] of that?  
6] A. That was my interpretation when I talked about  
7] statewide concern earlier, yes.  
8] MR. SWAN: We have no further questions.  
9] MR. BLACKSON: May I follow up?  
10] CHAIRMAN LEONARD: Let's go ahead with your  
11] questions and then we'll take a break.  
12]  
13] EXAMINATION  
14] BY MR. BLACKSON:  
15] Q. Again, is the Tonopah Egg Ranch physically  
16] located in a regulated area?  
17] A. No.  
18] Q. The regulated activity includes the definition of  
19] a regulated area? Let me borrow --  
20] MR. SWAN: Mr. Chairman, I am questioning  
21] whether these questions have already been asked and  
22] answered. I don't know what your recollection is but it  
23] seems to me that's the case.  
24] CHAIRMAN LEONARD: I don't necessarily  
25] disagree, but given the limited number of questions I

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1] think Mr. Blackson has, we're going to go ahead and allow  
2] him to ask those questions.  
3] BY MR. BLACKSON:  
4] Q. The definition of regulated cultural --  
5] agricultural activity. In order to perform a regulated  
6] agricultural activity, you must be in a regulated area; is  
7] that correct? And I will give this back to you.  
8] A. Correct, that's the definition of a regulated  
9] area, yes.  
10] Q. Now, you talked about an exemption from the  
11] agricultural process. Are you familiar with, in my  
12] pre-hearing disclosure, where the EPA sued California  
13] because they exempted animal feeding operations?  
14] A. I am familiar with that.  
15] Q. Do you believe that could happen here because of  
16] the exemption that you're saying exists statewide and  
17] countywide for animal feeding operations?  
18] A. I believe that could exist here. It would be  
19] speculative but by the same token it hasn't so --  
20] Q. So --  
21] MR. SWAN: It seems to me to be beyond the  
22] scope of direct.  
23] CHAIRMAN LEONARD: Remember on redirect, Mr.  
24] Blackson, it's got to be about questions that you may have  
25] already asked or things that you may have learned from Mr.

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1] Swan. So I understand where you're trying to go, but we  
2] got to bring it back to where we're at.  
3] MR. BLACKSON: One more question.  
4] BY MR. BLACKSON:  
5] Q. You said that you did not go to the EPA but you  
6] went to Indiana. So why would you go to Indiana and not  
7] the EPA?  
8] A. We -- I think you had said -- I don't know how  
9] you define going to Indiana. We just looked at  
10] literature. We didn't talk to anyone directly. In the  
11] end, we just looked at literature available. We did not  
12] speak to anyone directly.  
13] Q. And you did not speak to anybody directly at the  
14] EPA?  
15] A. Yeah, I believe we did.  
16] Q. Can you share the conversations?  
17] A. Yeah. You know, again, I don't remember the  
18] details of it and I don't have any particular notes or  
19] anything from that conversation, but we just discussed  
20] what -- with the EPA what was going on with that site and,  
21] you know, any guidance that they have and they had no  
22] guidance for us so --  
23] Q. Can you say who you talked to?  
24] A. Eugene Shin (phonetic).  
25] MR. BLACKSON: We've seen e-mails on that.

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1] Thank you.  
2] CHAIRMAN LEONARD: All right. Given the  
3] interest of time, we do have some closing discussions  
4] potentially as well as then there might be some questions  
5] but --  
6] MR. BLACKSON: I will be short.  
7] CHAIRMAN LEONARD: Mr. Swan?  
8] MR. SWAN: I just have a short paragraph.  
9] CHAIRMAN LEONARD: All right. Mr. Blackson,  
10] if you'd like to go ahead and give your closing.  
11] Hold on just a second. I can guarantee that  
12] I think we're going to have questions that we'll ask  
13] ourselves as we go through, but at this point, we don't  
14] have questions for Mr. Blackson or Mr. Swan.  
15] So, Mr. Blackson, if you'd go ahead and  
16] proceed with your closing and then we'll allow Mr. Swan.  
17] MR. BLACKSON: Yes. I'd just like to say  
18] that somebody has to decide if the county, Maricopa County  
19] Air Quality Department, will be allowed to continue to  
20] mischaracterize animal feeding operations as a major  
21] source for non-fugitive emissions. I believe you have the  
22] authority to stop this arbitrary behavior, and I ask that  
23] you decide in our favor. Thank you.  
24] CHAIRMAN LEONARD: Thank you.  
25] MR. SWAN: The Department has shown that we

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1] have a very narrow scope of authority with regard to this  
2] type of an action, and Mr. Blackson's appeal is whether or  
3] not the director's action in approving the minor permit  
4] revision was inappropriate. That's all we're looking at,  
5] so it is really very narrow.  
6] Our evidence has shown that we properly  
7] calculated and characterized the emissions. The decisions  
8] we made were not arbitrary. We acted reasonably and  
9] lawfully in performing the analysis of the minor permit  
10] revision application and the Department's decisions were  
11] based upon clear technical judgment.  
12] Two other points. Whether other states have  
13] chosen to regulate these operations without credible final  
14] evidence from the EPA does not mean that we must follow  
15] their lead, and the Department's decision to wait for the  
16] EPA to issue regulation is evidence of a consistent  
17] reasonable analysis. For all of the foregoing reasons,  
18] the Board should confirm the director's decision to issue  
19] the minor permit modification. Thank you.  
20] CHAIRMAN LEONARD: Thank you, gentlemen,  
21] very much. I'll conclude this portion of the hearing. I  
22] have a sneaking suspicion that the Board is going to need  
23] some additional time, so I would propose setting another  
24] meeting date to discuss in executive session some of what  
25] we've heard together, and hopefully at that same hearing,

1] stating that one of the things this hearing Board is  
2] tasked with doing is making sure that the public has an  
3] opportunity to understand where we're coming from, both  
4] individually and as a Board; if for no other reason, Mr.  
5] Blackson has put in a tremendous amount of effort, as well  
6] as has the Department. At that point, we will be  
7] scheduling another hearing or another meeting date.  
8] At this point, our court reporter, you are  
9] officially done.  
10] (The hearing concluded at 4:55 p.m.)  
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1] potentially come out with at least what we believe our  
2] decision is. So at this point, I'd like to stop the  
3] hearing now. I would like to take a five-minute break and  
4] then we'll come back for public comment.  
5] So at this point, the court reporter can be  
6] done at the conclusion of my statements and, Mr. Blackson  
7] and Mr. Swan, your group are free to stay. Obviously,  
8] you're free to go but we will coordinate our schedule with  
9] your schedules to get that scheduled up.  
10] MR. SWAN: Would we be involved -- if it's  
11] executive session, would we be involved in your next  
12] meeting? It sounds like deliberations without us but I'm  
13] asking for clarification.  
14] MR. HISER: It's a complex question, Mr.  
15] Swan. Under the Arizona open meetings law, while we can  
16] discuss in executive session certain aspects and questions  
17] that they may have for counsel for guidance, the actual  
18] deliberations of the Board are public activity. So the  
19] deliberation portion would be open to the public and so  
20] that's why we will coordinate to make sure, as a courtesy  
21] to the two parties and anybody else who sat through this  
22] hearing that would like to hear when that would be.  
23] MR. SWAN: Okay. I appreciate the  
24] explanation. Thank you.  
25] CHAIRMAN LEONARD: Again, it goes without

1] STATE OF ARIZONA ) SS.  
2] COUNTY OF MARICOPA )  
3] BE IT KNOWN that the foregoing proceedings were  
4] taken before me; that the witness before testifying was  
5] duly sworn by me to testify to the whole truth; that the  
6] foregoing pages are a full, true and accurate record of  
7] the proceedings, all done to the best of my skill and  
8] ability; that the proceedings were taken down by me in  
9] shorthand and thereafter reduced to print under my  
10] direction.  
11] I CERTIFY that I am in no way related to any of  
12] the parties hereto nor am I in any way interested in the  
13] outcome hereof.  
14] [ ] Review and signature was requested.  
15] [ ] Review and signature was waived.  
16] [X] Review and signature not required.  
17] I CERTIFY that I have complied with the ethical  
18] obligations set forth in ACJA 7-206(F) (3) and ACJA 7-206  
19] J(1) (g) (1) and (2).  
20] Dated at Phoenix, Arizona, this 22nd day of  
21] November, 2016.  
22] LAURA A. ASHEROOK, RMR  
23] Certified Reporter  
24] Arizona CR No. 50360  
25] \* \* \*  
I CERTIFY that GRIFFIN & ASSOCIATES, LLC, has  
complied with the ethical obligations set forth in ACJA  
7-206 (J) (1) (g) (1) through (6).  
GRIFFIN & ASSOCIATES, LLC  
Arizona RRF No. R1005

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